

## Form 7500, Section B

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### Section B Clauses Apply to All Subcontracts.

The clauses listed below are appropriate to all types of subcontracts regardless of pricing arrangement. Clauses in this section are incorporated into subcontracts by specifically citing clause numbers in the Schedule.

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**B1, Accounts, Records, and Inspection** (DEAR 970-5204-9)

- (a) **Accounts.** The Subcontractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, or anticipated to be incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles and consistently applied.
- (b) **Inspection and Audit of Accounts and Records.** All books of account and records relating to this subcontract shall be subject to inspection and audit by DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the subcontractor shall afford DOE and/or the University proper facilities for such inspection and audit.
- (c) **Audit of Lower-tier Subcontractor's Records.** The Subcontractor also agrees, with respect to any lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the lower-tier subcontract, costs incurred are a factor in determining the amount payable to the lower-tier subcontractor at any tier, to either conduct an audit of the lower-tier subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the DOE contracting officer.
- (d) **Disposition of Records.** Except as agreed upon by the University and the Subcontractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this subcontract, shall be delivered to the University or otherwise disposed of by the Subcontractor either as the University from time to time direct during the progress of work or, in any event, as the University shall direct upon completion or termination of this subcontract and final audit of accounts hereunder. Except as provided in this subcontract, all other records in the possession of the Subcontractor relating to this subcontract shall be preserved by the Subcontractor for a period of three (3) years after final payment under this subcontract or otherwise disposed of in such manner as may be agreed upon by the University and the Subcontractor.
- (e) **Reports.** The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports covering the work under this subcontract as the University may from time to time require.
- (f) **Inspections.** The DOE and the University shall have the right to inspect the work and activities of the Subcontractor under this subcontract at such time in such manner as it shall deem appropriate.
- (g) **Lower-tier Subcontracts.** The Subcontractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all lower-tier subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the lower-tier subcontract, costs incurred are a

factor in determining the amount payable to the lower-tier subcontractor. The Subcontractor further agrees to include an audit clause, the substance of which is Clause B5, Price Reduction for Defective Cost or Pricing Data.

**B2, Additional Paragraph (h) to Clause B1 for (a) all cost-type subcontracts (or lower-tier subcontracts) involving an estimated cost exceeding \$5 million and expected to run more than two (2) years, and (b) any other cost-type subcontract (or lower-tier subcontract) where deemed advisable by DOE advisable by the University and when the Subcontractor (or lower-tier subcontractor) already has an established internal audit organization.**

(h) **Internal Audits.** The Subcontractor agrees to conduct an internal audit and examination satisfactory

to DOE and the University of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this subcontract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the DOE Contracting Officer and/or the University.

**B3, Additional Data Requirements (FAR 52.227-16)**

(This clause does not apply if the subcontract is for the conduct of basic or applied research as set out elsewhere in the subcontract to be performed solely by a college or university and the estimated cost is not in excess of \$500,000.)

(a) In addition to the data as defined in the Rights in Data - General clause or other equivalent included in the

subcontract and specified elsewhere in the subcontract to be delivered, the University may, at any time during subcontract performance or within a period of three years after acceptance of all items to be delivered under the subcontract, order any data first produced or specifically used in the performance of the subcontract.

(b) The Rights in Data - General clause or other equivalent included in the subcontract is applicable to all data

ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Subcontractor to delivery any data the withholding of which is authorized by the Rights in Data or other equivalent clause of the subcontract or data that are specifically identified in the subcontract as not subject to this clause.

(c) When data are to be delivered under this clause, the Subcontractor will be compensated for converting the data into the prescribed form for reproduction and for delivery.

(d) The University may release the Subcontractor from the requirements of this clause for specifically identified data items at any time during the three-year period set forth in paragraph (a) above.

**B4, Administration of Cost Accounting Standards (FAR 52.230-5/Prime Contract Article 7, Clause 10)**

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this subcontract, the Subcontractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

- (a) Submit to the cognizant Contracting Officer or the University a description of any accounting change,  
the potential impact of the change on subcontracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change that displays the potential shift of costs between CAS-covered subcontracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee, etc.) and other Subcontractor business activity. As related to CAS-covered subcontracts, the analysis should display the potential impact of funds of the various Agencies/Departments (e.g., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:
- (1) For any change in cost accounting practices required to comply with a new CAS in accordance with paragraphs (a)(3) and (a)(4)(i) of the CAS clause within 60 days (or such other date as may be mutually agreed to) after award of a subcontract requiring this change.
  - (2) For any change in cost accounting practices proposed in accordance with subparagraph (a)(4)(ii) or (a)(4)(iii) of the Cost Accounting Standards clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
  - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the Cost Accounting Standards clause or by paragraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Subcontractor.
- (b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer or the University within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause.
- (c) Agree to appropriate subcontract and lower-tier subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the clause or with subparagraphs (a)(3) or (a)(4), of the CAS Disclosure and Consistency of Cost Accounting Practices clause.
- (d) For all lower-tier subcontracts subject either to the Cost Accounting Standards clause or to the Disclosure and Consistency of Cost Accounting Practices clause -

- (1) So state in the body of the lower-tier subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and
- (2) Include the substance of this clause in all negotiated lower-tier subcontracts. In addition, within 30 days after award of the lower-tier subcontract, submit the following information to the Subcontractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the lower-tier subcontractor's facility:
- (i) Lower-tier subcontractor's name and lower-tier subcontract number;
  - (ii) Dollar amount and date of award;
  - (iii) Name of Subcontractor making the award; and
  - (iv) Any changes the lower-tier subcontractor has made or proposes to make to accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the lower-tier subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.
- (e) Notify the University in writing of any adjustments required to lower-tier subcontracts under the subcontract and agree to an adjustment based on them, to the subcontractor's price or estimated cost and fee. This notice is due within 30 days after proposed lower-tier subcontract adjustments are received and shall include a proposal for adjusting the higher-tier subcontract or the subcontract appropriately.
- (f) For lower-tier subcontracts containing the CAS clause, require the lower-tier subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

#### **B5, Authorization and Consent (FAR 52.227-1)**

- (a) The Government authorizes and consents to all use and manufacture, in performing the subcontract at any tier of any invention described in and covered by a United States patent (1) embodied in the structure of composition of any clause, the delivery of which is accepted by the University for the Government under the subcontract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Subcontractor or a lower-tier subcontractor with (i) specifications or written provisions forming a part of the subcontract or (ii) specific instructions given by the University's procurement specialist directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the Patent Indemnity clause, if any, included in the subcontract

hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

- (b) The Subcontractor agrees to include and require inclusion of this clause, suitably modified to identify the parties, in all lower-tier subcontracts for goods or services (including construction, architect-engineer services, goods, models, samples, and design or testing services) expected to exceed \$25,000; however, omission of this clause from any lower-tier subcontract under or over \$25,000 does not affect this authorization and consent.

**B6, Authorization for Subcontractor's Use of Government Supply Sources** (DEAR 970.7104-31)

The University may issue the Subcontractor an authorization to use Government supply sources in the performance of the subcontract. Title to all property acquired by the Subcontractor under such an authorization shall vest in the Government unless otherwise specified in the subcontract. Such property shall not be considered to be Government-furnished property as distinguished from Government property. The provisions of the Property clause, except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

**B7, Classification** (DEAR 952.204-70)

In the performance of the work under the subcontract, the Subcontractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and goods originated or generated under the subcontract in accordance with classification regulations and guidance furnished to the Subcontractor by the University. Every lower-tier subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or goods shall include a provision to the effect that in the performance of such subcontract or purchase order, the lower-tier subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and goods in accordance with classification regulations and guidance furnished to such lower-tier subcontractor or supplier by the Subcontractor.

**B8, Competition in Subcontracting** (FAR 52.244-5)

The Subcontractor shall select lower-tier subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the subcontract.

**B9, Cost Accounting Standards** (FAR 52.230-2/Prime Contract Article 7, Clause 8))

- (a) Unless the subcontract is exempt under FAR 30.201-1 and 30.201-2, the provisions of Federal Acquisition Regulation (FAR) Subpart 30.3 are incorporated herein by reference and the Subcontractor, in connection with this subcontract shall -

- (1) (CAS-covered Subcontracts Only) By submission of a Disclosure Statement, disclose in writing the Subcontractor's cost accounting practices as required by FAR 30.202-1 through 30.202-5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for the subcontract shall be the same as the practices currently disclosed and applied on all other subcontracts and lower-tier subcontracts being performed by the Subcontractor and that contain a Cost Accounting Standards (CAS) clause. If the Subcontractor has notified the Government Contracting Officer or the University that the Disclosure Statement contains trade secrets and commercial or financial information that is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the University or the Government.
- (2) Follow consistently the Subcontractor's cost accounting practices in accumulating and reporting performance cost data concerning the subcontract. If any change in cost accounting practices is made for the purposes of any subcontract or lower-tier subcontract subject to CAS requirements, the change must be applied prospectively to the subcontract and the Disclosure Statement must be amended accordingly. If the subcontract price or cost allowance of the subcontract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.
- (3) Comply with all CAS including any modifications indicated thereto contained in FAR Subpart 30.4,  
in effect on the date of award of this subcontract or, if the Subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Subcontractor's signed certificate of current cost or pricing data. The Subcontractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a subcontract or lower-tier subcontract of the Subcontractor. Such compliance shall be required prospectively from the date of applicability of such subcontract or lower-tier subcontract.
- (4) (i) Agree to an equitable adjustment as provided in the Changes clause of the subcontract if the subcontract cost is affected by a change that, pursuant to paragraph (a)(3) above, the Subcontractor is required to make to the Subcontractor's established cost accounting practices.  
  
(ii) Negotiate with the Government Contracting Officer or the University to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of this paragraph (a)(4), provided that no agreement may be made under this provision that will increase costs paid by the University or the Government.  
  
(iii) When the Government Contracting Officer or the University and the Subcontractor agree to a change to a cost accounting practice, other than a change under paragraph (a)(4)(i) above, negotiate an equitable adjustment as provided in the Changes clause of the subcontract.
- (5) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the Subcontractor or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the University or the Government. Such adjustment shall provide for recovery of the increased costs to the University or the Government together with interest



thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Subcontractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the University or the Government.

(b) If the Government Contracting Officer or the University and the Subcontractor fail to agree whether

the Subcontractor or a lower-tier subcontractor has complied with an applicable CAS in FAR Subpart 30.4 or a CAS rule or regulation in FAR Subpart 30.3 and as to any cost adjustment demanded by the University or the Government, such failure to agree shall be a dispute concerning a question of fact within the meaning of the Disputes clause of the subcontract under the Contract Disputes Act (41 U.S.C. 601).

(c) The Subcontractor shall permit any authorized representatives of the DOE, the University, the CASB,

or the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Subcontractor shall include the substance of this clause except paragraph (b) in all negotiated lower-tier subcontracts that the Subcontractor enters into and shall require such inclusion in all other lower-tier subcontracts, including the obligation to comply with all CAS in effect on the award date of the lower-tier subcontract or, if the lower-tier subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the lower-tier subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated lower-tier subcontracts exceeding \$500,000 where the price negotiated is not based on

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in FAR 30.201-1.

Note (1): New or modified CAS shall apply to both national defense and nondefense CAS-covered subcontracts upon award of a new national defense CAS-covered subcontract containing the new Standard. The award of a new nondefense CAS-covered subcontract shall not trigger application of new CAS or modification to CAS.

Note (2): Lower-tier subcontractors shall be required to submit their Disclosure Statements to the Subcontractor. However, if a lower-tier subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Subcontractor the date of the Statement and the address of the ACO.

Note (3): In any case where a lower-tier subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the University, the

Subcontractor, or higher-tier subcontractor, the Subcontractor may authorize direct submission of that lower-tier subcontractor's Disclosure Statement to the same Government offices to which the Subcontractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Subcontractor of liability as provided in paragraph (a)(5) of this clause. In view of the foregoing and because the subcontract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards as specified in FAR Subparts 30.3 and 30.4 in connection with covered subcontracts, it is expected that the Subcontractor may wish to include a clause in each such lower-tier subcontract requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. However, the inclusion of such a clause and the terms thereof are matters of negotiation and agreement between the Subcontractor and the lower-tier subcontractor, provided that they do not conflict with the duties of the Subcontractor under its subcontract with the University. It is also expected that any lower-tier subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (4): If the lower-tier subcontractor is a business unit that, pursuant to FAR 30.201-2(b) is entitled to elect modified subcontract coverage and to follow FAR 30.401 and 30.402, the Disclosure and Consistency of Cost Accounting Practices clause shall be inserted instead of this clause.

Note (5): The terms defined in FAR 30.301 and 31.001 shall have the same meanings herein. As there defined, "negotiated subcontract" means any subcontract except a firm-fixed-price subcontract made by a Subcontractor or lower-tier subcontractor after receiving offers from at least two persons not associated with each other or with such Subcontractor or lower-tier subcontractor, provided that (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the lower-tier subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

#### **B10, Disclosure and Consistency of Cost Accounting Practices (FAR 52.230-3)**

(a) The Subcontractor, in connection with this subcontract, shall -

- (1) Comply with the requirements of 48 CFR, Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 48 CFR, Subpart 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose in effect on the date of award of the subcontract as indicated in 48 CFR, Part 9904.
- (2) (CAS-covered Subcontracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, Subparts 9903.202-1 through 9903.202-5. If the Subcontractor has notified the Contracting Officer or the University that the Disclosure Statement contains trade secrets and commercial or financial information that is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the Government.

Note (1): Lower-tier subcontractors shall be required to submit their Disclosure Statements to the Subcontractor. However, if a lower-tier subcontractor has previously submitted its Disclosure

Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Subcontractor the date of the Statement and the address of the ACO.

Note (2): In any case where a lower-tier subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Subcontractor or higher-tier subcontractor, the Subcontractor may authorize direct submission of the lower-tier subcontractor's Disclosure Statement to the same Government offices to which the Subcontractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Subcontractor of liability if it or a lower-tier subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and such failure results in any increased costs paid by the University or the Government. In view of the foregoing and since the subcontract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the CASB in connection with covered lower-tier subcontracts, it is expected that the Subcontractor may wish to include a clause in each such subcontract requiring the lower-tier subcontractor to appropriately indemnify the Subcontractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Subcontractor and lower-tier subcontractor, provided that they do not conflict with the duties of the Subcontractor under its subcontract with the University. It is also expected that any lower-tier subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its subcontractors.

Note (3): The terms defined in 4 CFR 331.20 shall have the same meanings in this clause. As there defined, "negotiated subcontract" means any lower-tier subcontract except a firm-fixed-price subcontract made by a Subcontractor or lower-tier subcontractor after receiving offers from at least two persons not associated with each other or such Subcontractor or lower-tier subcontractor, provided that (1) the solicitation to all competitors is identical, (2) price is the only consideration in selecting the lower-tier subcontractor from among the competitors solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted.

- (3) (i) Follow consistently the Subcontractor's cost accounting practices. A change to such practices may be proposed, however, by the Government Contracting Officer, the University, or the Subcontractor, and the Subcontractor agrees to negotiate with the Government Contracting Officer or the University the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to the subcontract, and the Disclosure Statement, if affected, must be amended accordingly.
- (ii) The Subcontractor shall, when the Government Contracting Officer or the University and the Subcontractor agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR, Subpart 9903.21-6(b), that the change is desirable not detrimental to the interests of the University or Government, negotiate an equitable adjustment as provided in the Changes clause of the subcontract. In the absence of the required finding, no agreement may be made under this subcontract clause that will increase costs paid by the University or the Government.

- (4) Agree to an adjustment of the subcontract price or cost allowance, as appropriate, if the

Subcontractor or a lower-tier subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the University or the Government. Such adjustment shall provide for recovery of the increased costs to the University or the Government together with interest thereon computed at the annual rate determined by the Secretary of the Treasury pursuant to P.L. 92-41, 85 Stat. 97 from the time the payment by the University or the Government was made to the time the adjustment is effected.

- (b) If the Government Contracting Officer or the University and the Subcontractor fail to agree whether the Subcontractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR, Parts 9903 and 9904, and as to any cost adjustment demanded by the University or the Government, such failure to agree shall be a dispute within the meaning of the Disputes clause of the subcontract.
- (c) The Subcontractor shall permit any authorized representatives of the DOE, the University, the CASB, or the Comptroller General of the United States to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.
- (d) The Subcontractor shall include in all negotiated lower-tier subcontracts that the Subcontractor enters into the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that
- (1) If the lower-tier subcontract is awarded to a business unit that pursuant to 48 CFR, Subparts 9903.201 is required to follow all CAS, the Cost Accounting Standards clause shall be inserted instead of this clause; or
- (2) This requirement shall apply only to negotiated lower-tier subcontracts exceeding \$500,000 where the price negotiated is not based on
- (i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (ii) Prices set by law or regulation; or
- (3) The requirement shall not apply to negotiated lower-tier subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subparts 9903.201-1.

#### **B11, Disclosure of Information (DEAR 952.204-72)**

- (a) It is mutually expected that the activities under the subcontract will not involve classified information.
- It is understood, however, that if in the opinion of either party, this expectation changes before the expiration or termination of all activities arising under the subcontract, that the party shall notify

the other party accordingly in writing without delay. In any event, the Subcontractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE and shall promptly inform the University in writing if and when classified information becomes involved or, in the mutual judgment of the parties, it appears likely that classified information or material may become involved. In such event, the Subcontractor shall have the right to terminate performance of the work under the subcontract, and the provisions of the subcontract regarding termination for the convenience of the University shall apply.

- (b) The Subcontractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.
- (c) The term "*Restricted Data*," as used in this clause means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material, or the use of special nuclear material in the production of energy. The term shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

#### **B12, Facilities Capital Cost of Money (FAR 52.215-30)**

Facilities capital cost of money will be an allowable cost under the contemplated subcontract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the FAR are met and facilities capital cost of money was included in the offer resulting in the subcontract.

#### **B13, Filing of Patent Applications on Classified Subject Matter (FAR 52.227-10)**

- (a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of the subcontract classified "Secret" or higher and by citing the 30-day provision below, the Subcontractor shall transmit the proposed application to the University. The University and/or the Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or whether the issuance of a patent should be otherwise delayed under pertinent Government statutes or regulations. The Subcontractor shall observe any instructions of the University regarding the manner of delivery of the patent application to the United States Patent Office, but the Subcontractor shall not be denied the right to file the application. If the University fails to give any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Subcontractor may file the application.
- (b) Before filing a patent application in the United States disclosing any subject matter of the subcontract classified "Confidential," the Subcontractor shall furnish to the University a copy of the application for determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent Government statutes or regulations.

- (c) When the subject matter of the subcontract is classified for reasons of security, the Subcontractor shall not file or cause to be filed in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of the subcontract without first obtaining written approval of the University.
- (d) When filing any patent application coming within the scope of this clause, the Subcontractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the University the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Subcontractor shall identify by separate letter and identify by agency and number the subcontract(s) that require security classification markings to be placed on the application.
- (e) The Subcontractor agrees to include and require the inclusion of this clause in all lower-tier subcontracts that cover or are likely to cover classified subject matter.

**B14, Foreign Ownership, Control, or Influence Over Subcontractor** (DEAR 952.204-74/Prime Contract Article 8, Clause 26)

- (a) For purposes of this clause, a foreign interest is defined as any of the following:
  - (1) A foreign government or foreign government agency;
  - (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
  - (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., that is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
  - (4) Any person who is not a U.S. citizen.
- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a Subcontractor by a foreign interest is such that a reasonable basis exists for concluding that the compromise of classified information or a significant quantity of special nuclear material as defined in 10 CFR Part 710, may result.
- (c) For purposes of this clause "Subcontractor" means any subcontractor at any tier.
- (d) The Subcontractor shall immediately provide the University written notice of any changes in the extent and nature of FOCI over the Subcontractor that would affect the answers to the questions in the Certification submitted for the solicitation that resulted in the subcontract. Further, notice of changes in ownership or control that are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the University.

- (e) In those cases where a Subcontractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the DOE shall consider proposals made by the Subcontractor to avoid or mitigate foreign influences.
- (f) If the DOE at any time determines that the Subcontractor is or is potentially subject to FOCI, the Subcontractor shall comply with such instructions that the University shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
- (g) The Subcontractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (g), in all lower-tier subcontracts under the subcontract that will require access to classified information or a significant quantity of special nuclear material. The Subcontractor shall also require such lower-tier subcontractors to submit a completed certification required in DEAR 952.204-73 and covered in University Form 812 before award of a lower-tier subcontract. Information to be provided by a lower-tier subcontractor pursuant to this clause will be submitted to the University.
- (h) Information submitted by a Subcontractor as required pursuant to this clause shall be treated by the University and the DOE to the extent permitted by law as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (i) The requirements of this clause are in addition to the requirement that a Subcontractor obtain and retain the security clearances required by the subcontract. This clause shall not operate as a limitation on the University's or the DOE's rights, including the University's right to terminate the subcontract.
- (j) The University may terminate the subcontract for default if
  - (1) The Subcontractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the University's instructions about safeguarding classified information, or make this clause apply to lower-tier subcontractors; or
  - (2) In the University's judgment, the Subcontractor creates a FOCI situation to avoid performance or a termination for default. (The University may terminate the subcontract for convenience if the Subcontractor becomes subject to FOCI and for reasons other than avoidance of performance of the subcontract cannot or chooses not to avoid or mitigate the FOCI problem.)

#### **B15, Foreign Travel (DEAR 952.247-70)**

- (a) Foreign travel, when charged directly, shall be subject to the prior approval of the DOE Contracting Officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

(b) Request for approval shall be submitted at least 50 days prior to the planned departure date, be on a

Request for Approval of Foreign Travel form, and when applicable, include a modification for proposed Soviet-bloc travel.

(c) Failure to obtain prior approval for foreign travel shall be cause for all costs relating to an unapproved trip

being unallowable under this subcontract.

(d) If personal time is taken in a foreign location under an approved trip, and such personal time exceeds the

business time during the trip, all costs for such trip will be unallowable under this subcontract.

(e) Reimbursement of travel costs shall be subject to limitations established by the United States Department of

State for the period during which a trip is made.

#### **B16, Inspection of Research and Development (Short Form) (FAR 52.246-9)**

The University has the right to inspect and evaluate the work performed or being performed under the subcontract and the premises where the work is being performed at all reasonable times and in a manner that will not unduly delay the work. If the University performs inspection or evaluation on the premises of the Subcontractor or a lower-tier subcontractor, the Subcontractor shall furnish and shall require lower-tier subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these tasks.

#### **B17, Labor Surplus Area Subcontracting Program (FAR 52.220-4/Prime Contract Article 8, Clause 16)**

(a) **Definitions.** "*Labor surplus area*," as used in this clause means a geographical area identified by the

Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"*Labor surplus area concern*," as used in this clause means a concern that together with its first-tier

subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the subcontract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the subcontract price.

(b) The Subcontractor agrees to establish and conduct a program to encourage labor surplus area (LSA)



concerns to compete for lower-tier subcontracts within their capabilities when the lower-tier subcontracts are consistent with the efficient performance of the subcontract at prices no higher than obtainable elsewhere. The Subcontractor shall

- (1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Subcontractor's labor surplus area subcontracting program;
  - (2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;
  - (3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly  
by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules to facilitate the participation of LSA concerns;
  - (4) Include the Utilization of Labor Surplus Area Concerns clause in lower-tier subcontracts that offer  
substantial LSA subcontracting opportunities; and
  - (5) Maintain records showing (i) the procedures adopted and (ii) the Subcontractor's performance, to  
comply with this clause. The records will be kept available for review by the Government until the expiration of one year after the award of this subcontract, or for such longer period as may be required by any other clause of this subcontract or by applicable law or regulations.
- (c) The Subcontractor further agrees to insert in any related subcontract that may exceed \$500,000 and  
that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify the University of the names of lower-tier subcontractors.

#### **B18, Limitation of Liability (FAR 52.246-23)**

- (a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in the subcontract, the Subcontractor shall not be liable for loss of or damage to property of the University or the Government including the goods delivered under the subcontract) that (1) occurs after University acceptance of the goods delivered under the subcontract and (2) results from any defects or deficiencies in the goods.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in or  
the University's acceptance of the goods results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial

personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

- (1) All or substantially all of the Subcontractor's business;
  - (2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or
  - (3) A separate and complete major industrial operation connected with the performance of the subcontract.
- (c) If the Subcontractor carries insurance or has established a reserve for self-insurance covering liability for loss or damage suffered by the University or the Government through the purchase or use of the goods required to be delivered under the subcontract and to the extent of such insurance or reserve, the Subcontractor shall be liable to the University or the Government for loss of or damage to property of the University or the Government occurring after University acceptance of and resulting from any defects or deficiencies in the goods delivered under the subcontract.
- (d) The Subcontractor shall include this clause, including this paragraph (d) and supplemented as necessary to reflect the relationship of the contracting parties, in all lower-tier subcontracts.

#### **B19, Limitation of Liability - High-Value Items (FAR 52.246-24)**

*(This clause shall apply only to those items identified in the subcontract as being subject to this clause.)*

- (a) Notwithstanding any other provision of the subcontract and except as provided in paragraphs (b) through (e) below, the Subcontractor shall not be liable for loss of or damage to property of the University or the Government (including the goods delivered under the subcontract) that (1) occurs after University acceptance of the goods delivered under the subcontract and (2) results from any defects or deficiencies in the goods.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in or the University's acceptance of the goods results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

- (1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of the subcontract.

(c) If the Subcontractor carries insurance or has established a reserve for self-insurance covering liability

for loss or damage suffered by the University or the Government through the purchase or use of the goods required to be delivered under the subcontract and to the extent of such insurance or reserve, the Subcontractor shall be liable to the University or the Government for loss of or damage to property the University or the Government occurring after University acceptance of and resulting from any defects or deficiencies in the goods delivered under the subcontract.

(d) (1) This clause does not diminish the Subcontractor's obligations, to the extent that they arise otherwise under the subcontract, relating to correction, repair, replacement, or other relief for any defect or deficiency in the goods delivered under the subcontract.

(2) Unless this is a cost-reimbursement subcontract, if loss or damage occurs and correction, repair,

or replacement is not feasible or desired by the University, the Subcontractor shall, as determined by the University

(i) Pay the University the amount it would have cost the Subcontractor to make correction, repair,

or replacement before the loss or damage occurred; or

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the University's rights under clauses, if included in this

subcontractor, that cover

(1) Warranty of technical data;

(2) Ground and flight risks or aircraft flight risks; or

(3) Government property.

(f) In each lower-tier subcontract, except a lower-tier subcontract covered by paragraph (g) below, the

Subcontractor shall insert the appropriate clause, supplemented as necessary to reflect the relationship of the contracting parties, as follows:

(1) In lower-tier subcontracts for high-value items only, after obtaining the Contract Administrator's

advance written approval, insert this clause, including this paragraph (f).

(2) In lower-tier subcontracts for other end items only, insert the clause at FAR 52.246-23, Limitation of Liability.

(g) In any lower-tier subcontract for both high-value items for which this clause is appropriate, and other end items for which the clause B20 is appropriate, after obtaining the University's advance written approval to use this clause, the Subcontractor shall (1) include both clauses, (2) identify high-value items by line item, and (3) insert the following preamble before paragraph (a) of this clause as used in that lower-tier subcontract:

*(This clause shall apply only to those items identified in this subcontract as being subject to this clause.)*

**B20, Limitation of Liability - Services (FAR 52.246-25)**

(a) Except as provided in paragraphs (b) and (c) below and except to the extent that the Subcontractor is

expressly responsible under the subcontract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Subcontractor shall not be liable for loss of or damage to property of the University or the Government that (1) occurs after University acceptance of services performed under the subcontract and (2) results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in or

the University's acceptance of services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Subcontractor's managerial personnel. The term "Subcontractor's managerial personnel" as used in this clause means the Subcontractor's directors, officers, and any of the Subcontractor's managers, superintendents, or equivalent representatives who have supervision or direction of

(1) All or substantially all of the Subcontractor's business;

(2) All or substantially all of the Subcontractor's operations at any one facility at which the subcontract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of the subcontract.

(c) If the Subcontractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the University or the Government through the Subcontractor's performance of services or furnishing of materials under the subcontract, the Subcontractor shall be liable to the University or the Government, to the extent of such insurance or

reserve, for loss of or damage to property of the University or the Government occurring after University acceptance of, and resulting from any defects or deficiencies in services performed or materials furnished under the subcontract.

- (d) The Subcontractor shall include this clause, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all lower-tier subcontracts over \$25,000.

**B21, Limitation on Subcontracting (FAR 52.219-14)**

- (a) This clause does not apply to the unrestricted portion of a partial set-aside.
- (b) By submission of an offer and execution of a subcontract, the Subcontractor agrees that in performance of the subcontract in the case of a subcontract for —
- (1) Services (except construction). At least 50 percent of the cost of subcontract performance incurred for personnel shall be expended for employees of the concern.
  - (2) Supplies (other than procurement from a regular dealer in such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
  - (3) General construction. The concern will perform at least 15 percent of the cost of the subcontract, not including the cost of materials, with its own employees.
  - (4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the subcontract, not including the cost of materials, with its own employees.

**B22, Notice of Partial Small Business Set-Aside (FAR 52.219-7)**

- (a) **Definitions.** "*Labor surplus area*," as used in this clause means a geographical area identified by the Department of Labor as an area of labor surplus.

"*Labor surplus area concern*," as used in this clause means a concern that, together with its first-tier subcontractors, will perform substantially in labor surplus areas.

*"Perform substantially in labor surplus areas,"* as used in this clause means that the costs incurred under the subcontract because of manufacturing, production, and performance of services in labor surplus areas exceed 50 percent of the subcontract price.

*"Small business concern,"* as used in this clause means a concern including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the size standards in the solicitation.

**(b) General.**

- (1) As identified elsewhere in the solicitation, a portion of this requirement has been set aside for award to one or more small business concerns.
- (2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of the solicitation.
- (3) The set-aside portion will be awarded at the highest unit price(s) in the subcontract(s) for the non-set-aside portion and adjusted to reflect transportation and other costs appropriate for the selected Subcontractor(s).
- (4) (i) The Subcontractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. These concerns fall into two groups:
  - (A) Group 1 - Small business concerns that are also labor surplus area concerns or
  - (B) Group 2 - Other small business concerns.
- (ii) Negotiations will be conducted with the concern in Group 1 that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue, first with concerns in Group 1 and then with concerns in Group 2, until a subcontract or subcontracts are awarded for the entire set-aside portion.
- (5) The University reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

**(c) Agreement.**

- (1) If awarded a subcontract as a small business - labor surplus area concern, the Subcontractor agrees that it will perform or cause the subcontract to be performed substantially in areas classified as labor surplus areas at the time of award or performance of the subcontract.

However, if an area selected by the Subcontractor is no longer classified as a labor surplus area at the time of performance, the Subcontractor will try to select another area for performance that is classified at the time as a labor surplus area.

- (2) The offeror agrees that, if awarded a contract that exceeds the small purchase limitation, it will submit a report to the Contract Administrator within 30 days after the date of award (or a longer period of time, if prescribed by the University) that contains the following information:
- (i) The dollar amount of the subcontract.
  - (ii) Identification of each labor surplus area in which subcontract (and lower-tier subcontract) performance is taking or will take place.
  - (iii) The total costs incurred and the total costs to be incurred under the subcontract on account of manufacturing, production, and performance of services in each of the labor surplus areas by (A) the Subcontractor and (B) lower-tier subcontractors.
  - (iv) The total dollar amount attributable to performance in labor surplus areas.
- (3) A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the subcontract, only end items manufactured or produced by small business concerns inside the U.S., its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service subcontracts.

### **B23, Notice of Total Small Business Set-Aside (FAR 52.219-6)**

(a) **Definition.** "Small business concern" as used in this clause means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts or subcontracts, and qualified as a small business under the size standards defined in Section 3 of the Small Business Act (15 U.S.C. 632).

(b) **General.**

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from the solicitation will be made to a small business concern.

(c) **Agreement.** A manufacturer or regular dealer submitting an offer in its own name agrees to furnish,

in performing the subcontract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service subcontracts.

**B24, Nuclear Hazards Indemnity Agreement** (DEAR 952.250-70/Prime Contract Article 17, Clause 2)

(a) **Authority.** This clause is incorporated into the subcontract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter call the Act).

(b) **Definitions.** The definitions set out in the Act shall apply to this clause.

(c) **Financial protection.** Except as hereafter permitted or required in writing by DOE or the University,

the Subcontractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE or the University may, however, at any time require in writing that the Subcontractor provide and maintain financial protection of such a type and in such amount as DOE or the University shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Subcontractor by DOE or the University.

(d) **Indemnification.**

(1) To the extent that the Subcontractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE or the University, DOE or the University will indemnify the Subcontractor and other persons indemnified against (i) claims for public liability as described in subparagraph (d)(2) of this clause; and (ii) such legal costs of the Subcontractor and other persons indemnified as are approved by DOE or the University, provided that DOE's and the University's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or \$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with the subcontract.

(2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in

the Act which (i) arises out of or in connection with the activities under the subcontract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

(e) **Waiver of Defenses.**

(1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as



defined in the Act, the Subcontractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or government immunity.

(2) In the event of an extraordinary nuclear occurrence which

(i) Arises out of, results from, or occurs in the course of the construction, possession, or operation

of a production or utilization facility; or

(ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

(iii) Arises out of or results from the possession, operation, or use by the Subcontractor or a lower-tier subcontractor of a device utilizing special nuclear material or by-product material, during the course of the subcontract activity; or

(iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Subcontractor, on behalf of itself and other persons indemnified, agrees to waive

(A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault or persons indemnified, including, but not limited to

(1) Negligence;

(2) Contributory negligence;

(3) Assumption of risk; or

(4) Unforeseeable intervening causes, whether involving the conduct of a third person or

an

act of God;

(B) Any issue or defense as to charitable or governmental immunity; and

(C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

(vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means

away from "the subcontract location" which phrase means any DOE facility, installation, or site at which contractual activity under the subcontract is being carried on, and any Subcontractor-owned or controlled facility, installation, or site at which the Subcontractor is engaged in the performance of contractual activity under the subcontract.

(3) The waivers set forth above

- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
- (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
- (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
- (iv) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
- (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
- (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
- (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
- (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (b) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) **Notification and litigation of claims.** The Subcontractor shall give immediate written notice to DOE and the University of any known action or claim filed or made against the Subcontractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE through the University, the Subcontractor shall furnish promptly to DOE, copies of all pertinent papers received by the Subcontractor or filed with respect to such actions of claims. DOE

and the University shall have the right to, and may collaborate with, the Subcontractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE and the University for the payment of any claim that DOE University may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE and the University may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE or the University, the Subcontractor shall furnish a reasonable assistance in effecting a settlement or asserting a defense.

(g) **Continuity of DOE obligations.** The obligations of DOE and the University under this clause shall

not be affected by any failure on the part of the Subcontractor to fulfill its obligation under the subcontract and shall be unaffected by the death, disability, or termination of the Subcontractor, or by the completion, termination or expiration of the subcontract.

(h) **Effect of other clauses.** The provisions of this clause shall not be limited in any way by, and shall be

interpreted without reference to, any other clause of the subcontract, including the clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, Officials Not to Benefit, and Examination of Records by the Comptroller General, and any provisions that are later added to the subcontract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

(i) **Civil Penalties. Reserved.**

(j) **Criminal penalties.** Any individual director, officer, or employee of the Subcontractor or of its lower-tier subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations, or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

(k) **Inclusion in subcontracts.** The Subcontractor shall insert this clause in any lower-tier subcontract

which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in lower-tier subcontracts in which the lower-tier subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under 170c. or k. of the Act for the activities under the subcontract.

**B25, Organizational Conflicts of Interest** (DEAR 952.209-72/ Prime Contract Article 7, Clause 17)

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- (a) **Purpose.** The primary purpose of this clause is to ensure that the Subcontractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) that relate to the work under the subcontract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of the subcontract.
- (b) **Scope.** Subject to paragraph (h) of this clause, the restrictions described herein shall apply to performance or participation by the Subcontractor and any of its affiliates or their successors in interest (herein collectively referred to as "Subcontractor") in the activities covered by this clause as a Subcontractor, lower-tier subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

**(1) Technical Consulting and Management Support Services.**

- (i) The Subcontractor shall be ineligible to participate in any capacity in DOE contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the Subcontractor's performance of work under this subcontract. Furthermore, unless so directed in writing by the University, the Subcontractor shall not perform any technical consulting or management support services work under this subcontract on any of its products or services or the goods or services of another firm if the Subcontractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Subcontractor from competing for follow-on contracts or subcontracts for technical consulting and management support services.
- (ii) If the Subcontractor, in the performance of the subcontract, prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Subcontractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Subcontractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the University, in which case the restriction in this subparagraph shall not apply.
- (iii) Nothing in this paragraph (b)(1) shall preclude the Subcontractor from offering or selling its standard commercial items to the University or the Government.

**(2) Access To and Use of Information.**

- (i) If the Subcontractor, in the performance of this subcontract, obtains access to information, such as University or DOE plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (P.L. 93-579), or data that have not been released or otherwise made available to the public, the Subcontractor agrees that without prior written approval of the University it shall not (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the University or DOE based on such information for a period of six months after the

completion of this subcontract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to the University or the Government which is based on such information until after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the University or the DOE.

- (ii) In addition, the Subcontractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (P.L. 93-579), or other confidential or privileged technical, business, or financial information under this subcontract, it shall treat such information in accordance with any restrictions imposed on such information.
- (iii) The Subcontractor shall have, subject to patent, data, and security provisions of this subcontract, the right to use technical data it first produces under this subcontract for its private purpose consistent with the Rights in Data provisions of this subcontract.

**(c) Disclosure After Award.**

- (1) The Subcontractor agrees that if after award it discovers an organizational conflict of interest with respect to this subcontract, an immediate and full disclosure shall be made in writing to the University which shall include a description of the action which the Subcontractor has taken or proposes to take to avoid or mitigate such conflicts. The University may, however, terminate the subcontract for convenience if it deems such termination to be in the best interest of the University or the Government.
- (2) In the event that the Subcontractor was aware of an organizational conflict of interest prior to the award of this subcontract and did not disclose the conflict to the University, the University may terminate the subcontract for default.

**(d) Lower-Tier Subcontracts.**

- (1) The Subcontractor shall include this clause, including this paragraph (d), in subcontracts of any tier which involve performance or work of the type specified in paragraph (b)(1) above or access to information of the type covered in paragraph (b)(2) above. The terms "subcontract," "Subcontractor," and "University" shall be appropriately modified to preserve the University's and the Government's rights.
- (2) If a lower-tier subcontract is to be issued for evaluation services or activities, technical consulting, or management support services work as defined in DEAR 909.570, the Subcontractor shall obtain for the University a disclosure statement or representation in accordance with DOE regulations in effect at the time, from each intended lower-tier subcontractor or consultant. The Subcontractor shall not enter into any lower-tier subcontract nor engage any consultant unless the University shall have first notified the Subcontractor that there is little or no likelihood that

an organizational conflict of interest exists or that despite the existence of a conflict of interest, the award is in the best interests of the University and the Government.

(e) **Remedies.** For breach of any of the above restrictions or for nondisclosure or misrepresentation of

any relevant facts required to be disclosed concerning the subcontract, the University may terminate the subcontract for default, may disqualify the Subcontractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this subcontract.

(f) **Waiver.** Requests for waiver under this clause shall be directed in writing to the University and shall

include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the University and the Government, the University shall grant such a waiver in writing.

(g) **Modifications.** Prior to a subcontract modification when the statement of work is modified to add new

work, the period of performance is significantly increased, or the parties to the subcontract are changed, the University will request and the Subcontractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

#### **B26, Patent Indemnity (FAR 52.227-3/Prime Contract Article 12, Clause 2)**

(a) The Subcontractor shall indemnify the University and the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of the manufacture or delivery of goods, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under the subcontract, or out of the use or disposal by or for the account of the Government of such goods or construction work.

(b) This indemnity shall not apply unless the Subcontractor shall have been informed as soon as practicable by the University and/or the Government of the suit or action alleging such infringement and shall have been given such opportunity that is afforded by applicable laws, rules, or regulations to participate in its defense. Further, this indemnity shall not apply to

(1) an infringement resulting from compliance with specific written instructions of the University directing a change in the goods to be delivered or in the material or equipment to be used, or directing a manner of performance of the subcontract not normally used by the Subcontractor;

(2) an infringement resulting from addition to or change in goods furnished or construction work performed that was made subsequent to delivery or performance; or

(3) a claimed infringement that is unreasonably settled without the consent of the Subcontractor, unless required by final decree of a court of competent jurisdiction.

**B27, Patent Rights (Long Form)** (Reference DEAR 927.300(a) and 41 CFR 9-9.107-5(a))

(a) **Definitions.** "*Subject invention*," means any invention or discovery of the Subcontractor conceived

or first actually reduced to practice in the course of or under this subcontract, and includes any art, method, process, machine manufacture, design or composition of matter, or any new and useful improvement thereof or any variety of plants, whether patented or unpatented under the Patent Laws of the United States of America or any foreign country.

"*Subcontract*," means any subcontract, grant, agreement, understanding, or other arrangement, which includes research, development, or demonstration work, and which includes any assignment or substitution of parties.

"*States and domestic municipal governments*," means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

"*Government agency*," includes an executive department, independent commission, board, office, agency, administration, authority, government corporation, or other government establishment of the Executive Branch of the government of the United States of America.

"*To the point of practical application*," means to manufacture (in the case of a composition or product), to practice (in the case of a process), or to operate (in the case of a machine) and under such conditions to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

"*Patent Counsel*," means the Department of Energy Patent Counsel assisting the University.

**(b) Allocation of Principal Rights.**

(1) **Assignment to the Government.** The Subcontractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Subcontractor under paragraphs (b)(2) and (c) of this clause.

(2) **Greater Rights Determinations.** The Subcontractor or the employee-inventor with authorization

of the Subcontractor may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (c) of this clause on identified inventions in accordance with 41 CFR 9-9.109-6(d). Such requests must be submitted to Patent Counsel (with notification by Patent Counsel to the University) at the time of the first disclosure pursuant to paragraph (e)(2) of this clause, or not later than nine months after conception or first actual reduction to practice, whichever occurs first, or such longer periods that may be authorized by Patent Counsel (with notification by Patent Counsel to the University) for good cause shown in writing by the Subcontractor.

**(c) Minimum Rights of the Subcontractor.**

**(1) Subcontractor License.** The Subcontractor reserves a revocable, nonexclusive, paid-up license

in each patent application filed in any country on a subject invention and any resulting patent to which the Government acquires title. The license shall extend to the Subcontractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Subcontractor was legally obligated to do so when the subcontract was awarded. The license shall be transferable only with the approval of DOE except when transferred to the successor of that part of the Subcontractor's business to which the invention pertains.

**(2) Revocation Limitations.** The Subcontractor's nonexclusive license retained pursuant to paragraph (c)(1) of this clause and sublicenses granted under it may be revoked or modified either in whole or in part by DOE but only to the extent necessary to achieve expeditious practical application of the subject invention under DOE's published licensing regulations (10 CFR 781) and only to the extent an exclusive license is actually granted. This license shall not be revoked in that field of use and/or geographical areas in which the Subcontractor or its sublicensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public, or is expected to do so within a reasonable time.

**(3) Revocation Procedures.** Before modification or revocation of the license or sublicense, pursuant

to paragraph (c)(2) of this clause, DOE shall furnish the Subcontractor a written notice of its intention to modify or revoke the license and any sublicense thereunder, and the Subcontractor shall be allowed 30 days, or such longer periods that may be authorized by the Patent Counsel (with notification by Patent Counsel to the University), to show cause why the license or any sublicense should not be modified or revoked. In accordance with 10 CFR 781, the Subcontractor shall have the right to appeal any decision concerning the modification or revocation of its license or any sublicense.

**(4) Foreign Patent Rights.** Upon written request to Patent Counsel (with notification by Patent Counsel to the University) and subject to DOE security regulations and requirements, there shall be reserved to the Subcontractor or to the employee-inventor with authorization to the Subcontractor the patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, provided that

(i) When specifically requested by DOE and three years after issuance of a foreign patent disclosing said subject invention, the recipient of such rights shall furnish DOE a report setting forth the commercial use that is being made or is intended to be made of said invention and the steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government, including any Government agency, and domestic municipal governments of the states, unless the Head of



the Agency or designee determines that it would not be in the public interest to acquire the license for the states and domestic municipal governments.

- or
- (iii) Subject to the rights granted in (c)(1), (2) and (3) of this clause, the Head of the Agency or designee shall have the right to terminate the foreign patent rights granted in this paragraph (c)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Head of the Agency or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or will be taken within a reasonable time.
- four
- (iv) Subject to the rights granted in paragraphs (c)(1), (2) and (3) of this clause, commencing years after foreign patent rights are accorded under this paragraph (c)(4), the Head of the Agency or designee shall have the right to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable and appropriate under the circumstances to terminate said foreign patent rights, in whole or in part, following a hearing upon notice to the public and upon a petition by an interested person justifying such hearing:
- or
- (A) Upon review of such material as he deems relevant and after the recipient of such rights other interested person has had the opportunity to provide such relevant and material information as the Head of the Agency or designee may require, if the Head of the Agency or designee determines that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or
- (B) Unless the recipient of such rights demonstrates to the satisfaction of the Head of the Agency or designee at such hearing that the recipient has taken effective steps or within a reasonable time thereafter is expected to take such steps necessary to accomplish substantial use of the invention.

**(d) Filing of Patent Applications.**

- (1) Regarding each subject invention in which the Subcontractor or the inventor requests foreign patent rights in accordance with paragraph (c)(4) of this clause, a request may also be made for the right to file and prosecute the U. S. application on behalf of the US Government. If such request is granted, the Subcontractor or inventor shall file a domestic patent application on the invention within six months after the request for foreign patent rights is granted or such longer period of time that may be approved by the Patent Counsel for good cause shown in writing by the requester. Regarding the invention, the requester shall promptly notify the Patent Counsel (with notification by Patent Counsel to the University) of any decision not to file an application.
- or
- (2) For each subject invention on which a domestic patent application is filed by the Subcontractor or inventor, the Subcontractor or inventor shall

- (i) Within two months after the filing of a patent application or within two months after submission of the invention disclosure if the patent application has been filed previously, deliver to the Patent Counsel a copy of the application as filed including the filing date and serial number;
  - (ii) Within six months after filing the application or within six months after submitting the invention disclosure if the application has been filed previously, deliver to the Patent Counsel a duly executed and approved assignment to the Government on a form specified by the Government;
  - (iii) Provide the Patent Counsel with the original patent grant promptly after a patent is issued on the application; and
  - (iv) Not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.
- (3) Regarding each subject invention for which the Subcontractor or inventor has requested foreign patent rights, and in accordance with applicable statutes and regulations, the Subcontractor or inventor shall file a patent application on the invention in each foreign country in which such request is granted, within one of the following periods:
- (i) Eight months from the date of filing a corresponding United States application or, if such an application is not filed, six months from the date the request was granted.
  - (ii) Six months from the date a license is granted by the Commissioner of Patents and Trademarks to file the foreign patent application when such filing has been prohibited by security reasons; or
  - (iii) Such longer periods that may be approved by the Patent Counsel for good cause shown in writing by the Subcontractor or inventor.
- (4) Subject to the license specified in paragraphs (c)(1), (2) and (3) of this clause, the Subcontractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the Subcontractor or inventor fails to have a patent application filed in accordance with paragraph (d)(3) of this clause or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent and not less than 60 days before the expiration period for any action required by any patent office, the Subcontractor or inventor shall notify the Patent Counsel of such failure or decision, and shall deliver to the Patent Counsel the executed instruments necessary for the conveyance specified in this paragraph.

**(e) Identification of Invention, Disclosures, and Reports.**

- (1) The Subcontractor shall establish and maintain active and effective procedures to ensure that

subject inventions are promptly identified and timely disclosed. These procedures shall include maintaining laboratory notebooks or equivalent records and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Subcontractor shall furnish DOE a description of these procedures so that it may evaluate and determine their effectiveness.

(2) The Subcontractor shall furnish the following to the Patent Counsel (with notification by the Patent

Counsel to the University) on a DOE approved form:

(i) A written report containing full and complete technical information concerning each subject invention within six months after conception or first actual reduction to practice, whichever occurs first during or under the subcontract, but in any event before any sale, public use, or public disclosure of such invention known to the Subcontractor. The report shall identify the subcontract and inventor and shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological, or electrical characteristics of the invention. The report should also include any request for foreign patent rights under paragraph (c)(4) of this clause and any request to file a domestic patent application under (d)(1) of this clause; however, such request shall be made within the period set forth in paragraph (b)(2) of this clause. When an invention is reported under this paragraph (e)(2)(i), it shall be presumed to have been conceived or first actually reduced to practice in the course of or under the subcontract, unless the Subcontractor contends it was not so made, in accordance with paragraph (g)(2)(ii) of this clause.

(ii) Upon request, but not more than annually, interim reports on a DOE-approved form listing subject inventions and subcontracts awarded containing a Patent Rights clause for that period and certifying that

(A) The Subcontractor's procedures for identifying and disclosing subject inventions as required

by this paragraph (e) have been followed throughout the reporting period;

(B) All subject inventions have been disclosed or that there are no such inventions; and

(C) All lower-tier subcontracts containing a Patent Rights clause have been reported or that no

such subcontracts have been awarded;

(iii) A final report on a DOE-approved form within three months after completion of the subcontract

work listing all subject inventions and all lower-tier subcontracts awarded containing a Patent Rights clause and certifying that

(A) All subject inventions have been disclosed or that there were no such inventions and

(B) All lower-tier subcontracts containing a Patent Rights clause have been reported or that no such subcontracts have been awarded.

(3) To effect the provisions of this clause, the Subcontractor shall obtain patent agreements from all

persons in its employ who perform any part of the work under the subcontract except nontechnical personnel, such as clerical employees and manual laborers.

(4) The Subcontractor agrees that the University and the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause. If the Subcontractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures until the expiration of the time period specified in paragraph (d)(1) of this clause, but the Government or its employees shall never be liable for any publication thereof.

(f) **Publication.** It is recognized that during the course of the work under the subcontract, the Subcontractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice during or under the subcontract. So that public disclosure of such information will not adversely affect the patent interests of DOE or the Subcontractor, patent approval for release or publication shall be secured from Patent Counsel before any such release or publication.

**(g) Forfeiture of Rights in Unreported Subject Inventions.**

(1) At the request of the Head of the Agency or designee, the Subcontractor shall forfeit to the Government all rights in any subject invention that the Subcontractor fails to report to Patent Counsel (with notice by Patent Counsel to the University) within six months after the time the Subcontractor

(i) Files or causes to be filed a United States or foreign patent application on subject invention; or

(ii) Submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Subcontractor shall not forfeit rights in a subject invention if, within the time specified in paragraph (1)(i) or (1)(ii) of this paragraph (g), the Subcontractor

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice during or under the subcontract and delivers the same to Patent Counsel (with notification by Patent Counsel to the University) or

(ii) Contending that the invention is not a subject invention, nevertheless discloses the invention

and all facts pertinent to this contention to the Patent Counsel (with notification by Patent Counsel to the University); or

- (iii) Establishes that the failure to disclose did not result from the Subcontractor's fault or negligence.

(3) Pending written assignment of the patent application and patent on a subject invention determined

by the Head of the Agency or designee to be forfeited (such determination to be a final decision under the Disputes clause of FAR 52.233-1), the Subcontractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (g) shall be in addition to and shall not supersede other rights and remedies that the Government may have regarding subject inventions.

**(h) Examination of Records Relating to Inventions.**

(1) Until the expiration of three years after final payment under the subcontract, DOE or its authorized

representative shall have the right to examine any books, including laboratory notebooks, records, documents, and other supporting data of the Subcontractor that DOE or its authorized representatives reasonably deem pertinent to the discovery or identification of subject inventions or to determine compliance with the requirements of this clause.

- (2) DOE or its authorized representatives shall have the right to examine all books, including laboratory notebooks, records and documents of the Subcontractor about the conception or first actual reduction to practice of inventions in the same field of technology as the work under this subcontract to determine whether any such inventions are subject inventions if the Subcontractor refuses or fails to

(i) Establish the procedures of paragraph (e)(1) of this clause; or

(ii) Maintain and follow such procedures; or

(iii) Correct or eliminate any material deficiency in the procedures within 30 days after the University or DOE notifies the Subcontractor of such a deficiency.

**(i) Withholding of Payment. *(Not applicable to lower-tier subcontracts).***

- (1) Any time before final payment of the amount of the subcontract, and if it deems such action warranted, the University may withhold payment until a reserve not exceeding \$50,000 or five percent of the amount of the subcontract, whichever is less, shall have been set aside if, in the opinion of DOE, the Subcontractor fails to

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(1) of this clause; or

(ii) Disclose any subject invention pursuant to paragraph (e)(2)(i) of this clause; or

- (iii) Deliver the interim reports pursuant to paragraph (e)(2)(ii) of this clause; or
  - (iv) Provide the information regarding subcontracts pursuant to paragraph (j)(5) of this clause; or
  - (v) Using a DOE-approved form, convey to the Government the title and/or rights of the Government in each subject invention as required by this clause.
- (2) The reserve or balance shall be withheld until DOE has determined that the Subcontractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.
- (3) Final payment under this subcontract shall not be made by the University before the Subcontractor delivers to the Patent Counsel all disclosures of subject inventions and other information required by paragraph (c)(2)(i) of this clause, the final report required by paragraph (c)(2)(iii) of this clause, and the Patent Counsel has issued a patent clearance certification to the University.
- (4) At its discretion, the University may decrease or increase the sums withheld up to the maximum authorized above. If the Subcontractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed \$50,000 or one percent of the amount of the subcontract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the subcontract. The withholding of any amount or subsequent payment of it shall not be construed as a waiver of any rights accruing to the Government under the subcontract.

**(j) Lower-Tier Subcontracts.**

- (1) The Subcontractor will include the Patent Rights -Small Business Firms or Nonprofit Organizations clause, suitably modified to identify the parties, in all lower-tier subcontracts regardless of the tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization. In all other lower-tier subcontracts, regardless of the tier, for experimental, developmental, demonstration, or research work, the Subcontractor will include this Patent Rights clause, modified to identify the parties. If a lower-tier subcontractor refuses to accept the clause or if, in the opinion of the Subcontractor, the clause is inconsistent with DOE's patent policies, the Subcontractor shall
- (i) Promptly submit written notice to DOE through the University setting forth the reasons for the lower-tier subcontractor refusal and other pertinent information that may expedite disposition of the matter; and
  - (ii) Not proceed with the lower-tier subcontract without the written authorization of the University.

- (2) Except as may be otherwise provided in this clause, the Subcontractor shall not acquire any rights in its lower-tier subcontractor's subject invention for the Subcontractor's own use (as distinguished from such rights that may be required solely to fulfill the Subcontractor's subcontract obligations to the University in the performance of the subcontract) in any lower-tier subcontract by using a subcontract as consideration therefore.
- (3) All invention disclosures, reports, instruments, and other information required to be furnished by the Subcontractor to the University and DOE under the provisions of a Patent Rights clause in any lower-tier subcontract hereunder may, at the discretion of the University, be furnished to the Subcontractor for transmission to the University and the DOE.
- (4) The Subcontractor shall promptly notify DOE through the University in writing upon the award of any lower-tier subcontract containing a Patent Rights clause by identifying the lower-tier subcontractor, the work to be performed under the lower-tier subcontract, and the dates of award and estimated completion. Upon the request of the University or the DOE, the Subcontractor shall furnish a copy of the lower-tier subcontract.
- (5) The Subcontractor shall identify all subject inventions of the lower-tier subcontractor of which it acquires knowledge in the performance of the subcontract and shall notify the Patent Counsel (with notification by the Patent Counsel to the University) promptly upon the identification of the inventions.
- (6) It is understood that the Government is the third party beneficiary of any lower-tier subcontract clause granting rights to the Government in subject inventions, and the Subcontractor hereby assigns to the Government all rights that the Subcontractor would have to enforce the lower-tier subcontractor's obligations for the benefit of the Government regarding subject inventions. The Subcontractor shall not be obligated to enforce the agreements of any lower-tier subcontractor hereunder relating to the obligations of the lower-tier subcontractor to the Government regarding subject inventions.

**(k) Background Patents.** *(Applies if the subcontract is for \$250,000 or more.)*

- (1) *"Background patent"* means a domestic patent covering an invention or discovery that is not a subject invention and that is owned or controlled by the Subcontractor at any time through the completion of the subcontract
- (i) That the Subcontractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and
- (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process,

method, machine, manufacture, or composition of matter (including relatively minor modifications) that is a subject of research, development, or demonstration work performed under the subcontract.

- (2) The Subcontractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent to practice a subject invention of the subcontract by or for the Government in research, development, and demonstration work only.
- (3) The Subcontractor also agrees that upon written application by DOE, it will grant to responsible parties for purposes of practicing a subject invention of the subcontract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Subcontractor believes that exclusive or partially exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Subcontractor.
- (4) Notwithstanding the foregoing paragraph (k)(3), the Subcontractor shall not be obligated to license  
any background patent if the Subcontractor demonstrates to the satisfaction of the Head of the Agency or designee that
  - (i) A competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources or
  - (ii) The Subcontractor or its licensees are supplying the subject matter covered by background patent in sufficient quantity and at reasonable prices to satisfy market needs or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

**(l) Atomic Energy.**

- (1) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Subcontractor or its employees regarding any invention or discovery made or conceived in the course of or under the subcontract.
  - (2) Except as otherwise authorized in writing by DOE, the Subcontractor will obtain patent agreements to effect the provisions of paragraph (1)(1) from all persons who perform any part of the work under the subcontract, except nontechnical personnel, such as clerical employees and manual laborers.
- (m) Limitation of Rights.** Nothing contained in this Patent Rights clause shall be deemed to give the Government any rights regarding any invention other than a subject invention except as set forth in the Patent Rights clause of the subcontract regarding background patents and, if included, the facilities license.



**B28, Patent Rights - Small Business Firms or Nonprofit Organizations** (DEAR 952.227-71/Prime Contract Article 12, Clause 1)

(a) **Definitions.** *"Invention,"* means any invention or discovery that is or may be patentable or otherwise

protectable under Title 35 of the United States Code (U.S.C.) or any novel variety of plant that is or may be protected under the Plant Variety Protection Act (7 USC 2321 et seq.).

*"Subject invention,"* means any invention of the Subcontractor conceived or first actually reduced to practice in the performance of work under the subcontract, provided that in the case of a variety of plant, the date of determination (as defined in Section 44(d) of the Plant Variety Protection Act, 7 USC 2401(d)) must also occur during the period of subcontract performance.

*"Practical application,"* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system, and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

*"Made,"* when used in relation to any invention, means the conception or first reduction to practice of such invention.

*"Small business firm,"* means a small business concern as defined at Section 2 of P.L. 85-536 (15 USC 632) and implementing regulations of the Administrator of the Small Business Administration. For this clause, the size standard for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

*"Nonprofit organization,"* means a university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC 501(c) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 USC 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

*"Patent Counsel,"* means the Department of Energy (DOE) Patent Counsel assisting the University.

(b) **Allocation of Principal Rights.** The Subcontractor may retain the entire right, title, and interest

throughout the world to each subject invention subject to the provisions of this clause and 35 USC 203. With respect to any subject invention in which the Subcontractor retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) **Invention Disclosure, Election of Title, and Filing of Patent Application by Subcontractor.**

(1) The Subcontractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to Subcontractor personnel responsible for patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the subcontract under which the invention was made and the inventor(s). The disclosure

shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication on sale or public use of the invention; whether a manuscript describing the invention has been submitted for publication; and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the Subcontractor will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Subcontractor.

- (2) The Subcontractor will elect in writing whether to retain title to any such invention by notifying the Patent Counsel within two years of disclosure to the Patent Counsel. However, in any case in which publication, on sale or public use, has initiated the one-year statutory period during which valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Patent Counsel to a date that is no more than sixty days before the end of the statutory period.
- (3) The Subcontractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, before the end of any statutory period during which valid patent protection can be obtained in the United States after a publication on sale or public use. The Subcontractor will file patent applications in additional countries or international patent offices either within ten months of the corresponding initial patent application or within six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.
- (4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing under subparagraphs (c)(1), (2), and (3) may, at the discretion of the Patent Counsel, be granted.
- (d) **Conditions Under Which the Government May Obtain Title.** The Subcontractor will convey to the DOE, upon written request, title to any subject invention
- (1) If the Subcontractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) above or elects not to retain title, provided that the DOE may only request title within 60 days after learning of the failure of the Subcontractor to disclose or elect within the specified times;
- (2) In those countries in which the Subcontractor fails to file patent applications within the times specified in paragraph (c) above, provided, however, that if the Subcontractor has filed a patent application in a country after the time specified in paragraph (c) above prior to its receipt of the written request of the Patent Counsel, the Subcontractor shall continue to retain title in that country; or

- (3) In any country in which the Subcontractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on a patent on a subject invention.

**(e) Minimum Rights to Subcontractor and Protection of the Subcontractor's Rights to File.**

- (1) The Subcontractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Subcontractor fails to disclose the subject invention within the times specified in paragraph (c) above. The Subcontractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Subcontractor is a part and includes the right to grant sublicenses of the same scope to the extent that the Subcontractor was legally obligated to do so at the time the subcontract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of the part of the Subcontractor's business to which the invention pertains.
- (2) The Subcontractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR 404 and 10 CFR 781. This license will not be revoked in that field of use or the geographical areas in which the Subcontractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Subcontractor, its licensees, or its domestic subsidiaries or affiliates have filed to achieve practical application in that foreign country.
- (3) Before revocation or modification of the license, DOE will furnish the Subcontractor a written notice of its intention to revoke or modify the license, and the Subcontractor will be allowed thirty days (or such other time as DOE may authorize for good cause shown by the Subcontractor) after the notice to show cause why the license should not be revoked or modified. The Subcontractor has the right to appeal, in accordance with 37 CFR 404 and 10 CFR Part 781, any decision concerning the revocation or modification of its license.

**(f) Subcontractor Action to Protect the Government's Interest.**

- (1) The Subcontractor agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to
  - (i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Subcontractor elects to retain title, and
  - (ii) Convey title to DOE when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- (2) The Subcontractor agrees to require, by written agreement, its employees, other than clerical and

nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Subcontractor each subject invention made under the subcontract so that the Subcontractor can comply with the disclosure provisions of paragraph (c) above and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) above. The Subcontractor shall instruct such employees through its employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit filing patent applications before United States or foreign statutory bars.

(3) The Subcontractor will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent in any country not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The Subcontractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement:

"The invention was made with Government support under [identify the subcontract] awarded by the University of California. The Government has certain rights in this invention."

(5) Upon request, the Subcontractor agrees to

(i) Provide a report prior to the close-out of the subcontract listing all subject inventions or stating

that there were none;

(ii) Provide a copy of the patent application, filing date, serial number and title, patent number, and

issue date for any subject invention in any country in which the Subcontractor has applied for a patent; and

(iii) Provide not more than annually listings of all subject inventions that were disclosed to DOE during the applicable reporting period.

**(g) Lower-tier Subcontracts.**

(1) The Subcontractor will include this clause, suitably modified to identify the parties, in all lower-tier

subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or a domestic nonprofit organization. The lower-tier subcontractor will retain all rights provided for the Subcontractor in this clause and the Subcontractor will not, as part of the consideration for awarding the subcontract, obtain rights in the lower-tier subcontractor's subject inventions.

(2) The Subcontractor will include in all other lower-tier subcontracts, regardless of tier, for

experimental, developmental, demonstration, or research work the patent rights clause of 41 CFR 9-9.107-5(a) or 9-9.107-6 as appropriate, modified to identify the parties.

(3) In the case of subcontracts at any tier, DOE, the lower-tier subcontractor, and the Subcontractor

agree that the mutual obligations of the parties created by this clause constitute a subcontract between the lower-tier subcontractor and DOE with respect to those matters covered by this clause, provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) **Reporting on Utilization of Subject Inventions.** The Subcontractor agrees to submit, on request,

periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Subcontractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Subcontractor, and such other data and information that DOE may reasonably specify. The Subcontractor also agrees to provide additional reports that DOE may request in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 USC 202(c)(5), DOE agrees that it will not disclose such information to persons outside the Government without permission of the Subcontractor.

(i) **Preference for United States Industry.** Notwithstanding any other provision of this clause, the

Subcontractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Subcontractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) **March-in Rights.** The Subcontractor agrees that with respect to any subject invention in which it has

acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of DOE to require the Subcontractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants upon terms that are reasonable under the circumstances, and if the Subcontractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that

(1) Such action is necessary because the Subcontractor or assignee has not taken or is not expected to take within a reasonable time effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by

the Subcontractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and

such requirements are not reasonably satisfied by the Subcontractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**(k) Special Provisions for Subcontracts with Nonprofit Organizations.** If the Subcontractor is a

nonprofit organization, it agrees that

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization that has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Subcontractor;

(2) The Subcontractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 USC 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Subcontractor with respect to subject inventions after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support for scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the Subcontractor has determined that the small business firm has a plan or proposal for marketing the invention that, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms, provided that the Subcontractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Subcontractor. However, the Subcontractor agrees that the Secretary of Commerce may review the Subcontractor's licensing program and decisions regarding small business applicants, and the Subcontractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary of Commerce's review discloses that the Subcontractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

**(l) Communications.** The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

**B29, Price Reduction for Defective Cost or Pricing Data (FAR 52.215.22)**

- (a) If any price, including profit or fee, negotiated in connection with the subcontract or any cost reimbursable under the subcontract was increased by any significant amount because (1) the Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract shall be modified to reflect the reduction.
- (b) Any reduction in the subcontract price under paragraph (a) above due to defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor, provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.
- (c) (1) If the University determines under paragraph (a) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:
- (i) The Subcontractor or lower-tier subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
  - (ii) The University should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier subcontractor took no affirmative action to bring the character of the data to the attention of the University.
  - (iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.
  - (iv) The Subcontractor or lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the University based upon the facts shall be allowed against the amount of a contract price reduction if
- (A) The Subcontractor certifies to the University that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and

(B) The Subcontractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if

(A) The understated data was known by the Subcontractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The University or the Government proves that the facts demonstrate that the subcontract price

would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(d) If any reduction in the subcontract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the University at the time such overpayment is repaid. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the University is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of The Treasury under 26 U.S.C. 6621(a)(2).

**B30, Price Reduction for Defective Cost or Pricing Data - Modifications (FAR 52.215-23)**

(a) This clause shall become operative only for any modification to the subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification for which the price is

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause or

any cost reimbursable under the subcontract was increased by any significant amount because (1) the Subcontractor or a lower-tier subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data; (2) a lower-tier subcontractor or prospective lower-tier subcontractor furnished the Subcontractor's cost or pricing data that were not complete, accurate, and current as certified in the Subcontractor's Certificate of Current Cost or Pricing Data; or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the subcontract



shall be modified to reflect the reduction. This right to a price reduction is limited to that reduction resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the subcontract price under paragraph (b) above because of defective data from a prospective lower-tier subcontractor that was not subsequently awarded the lower-tier subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual lower-tier subcontract or (2) the actual cost to the Subcontractor, if there was no lower-tier subcontract, was less than the prospective lower-tier subcontract cost estimate submitted by the Subcontractor, provided that the actual lower-tier subcontract price was not itself affected by defective cost or pricing data.

(d) (1) If the University determines under paragraph (b) of this clause that a price or cost reduction should be made, the Subcontractor agrees not to raise the following matters as a defense:

(i) The subcontractor or lower-tier subcontractor was a sole source supplier or otherwise was in a

superior bargaining position and thus the price of the subcontract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The University should have known that the cost or pricing data in issue were defective even though the Subcontractor or lower-tier subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The subcontract was based on an agreement about the total cost of the subcontract and there was no agreement about the cost of each item procured under the subcontract.

(iv) The Subcontractor or lower-tier subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined

appropriate by the University based upon the facts shall be allowed against the amount of a contract price reduction if

(A) The Subcontractor certifies to the University that, to the best of the Subcontractor's knowledge and belief, the Subcontractor is entitled to the offset in the amount requested; and

(B) The Subcontractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if --

(A) The understated data was known by the Subcontractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The University or the Government proves that the facts demonstrate that the subcontract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment

was made prior to the date of the modification reflecting the price reduction, the Subcontractor shall be liable to and shall pay the University at the time such overpayment is repaid. Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Subcontractor to the date the Government is repaid by the Subcontractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of The Treasury under 26 U.S.C. 6621(a)(2).

### **B31, Privacy Act Notification (FAR 52.224-1))**

The Subcontractor will be required to design, develop, or operate a system of records on individuals, to accomplish a federal agency function subject to the Privacy Act of 1974, P. L. Law 93-579, as amended (5 U.S.C. 552a), and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

### **B32, Privacy Act (FAR 52.224-2/Prime Contract Article 11, Clause 3)**

(a).**Definitions.** *"Operation of a system of records,"* as used in this clause means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

*"Record,"* as used in this clause means any item, collection or grouping of information about an individual that is maintained by or on behalf of a Government agency, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains the person's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or a photograph.

*"System of records on individuals,"* as used in this clause means a group of any records under the control of any Government agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(b) The Subcontractor agrees to

(1) Comply with the Privacy Act of 1974 (the Act) and the rules and regulations of the DOE issued under the Act in the design, development, or operation of any system of records on individuals to accomplish a Government agency function when the subcontract specifically identifies the systems of records and the design, development, or operation work that the Subcontractor is to perform;

- (2) Include the Privacy Act notification contained in the subcontract, in every solicitation and resulting lower-tier subcontract, and in every lower-tier subcontract awarded without a solicitation when the statement of work in the proposed lower-tier subcontract requires the design, development, or operation of a system of records on individuals that is subject to the ACT; and
- (3) Include this clause, including this subparagraph (3), in all lower-tier subcontracts awarded under the subcontract that requires the design, development, or operation of such a system of records.
- (c) If the Act is violated, a civil action may be brought against the Government agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish a Government agency function, and criminal penalties may be imposed upon the officers or employees of the Government agency when the violation concerns the operation of a system of records on individuals to accomplish a Government agency function. For purposes of the Act, when the subcontract is for the operation of a system of records on individuals to accomplish a Government agency function, the Subcontractor and any employee of the Subcontractor is considered to be an employee of the Government agency.

**B33, Property Furnished "As Is" (FAR 52.245-19)**

- (a) The University makes no warranty whatsoever with respect to Government property furnished "as is," except that the property is in the same condition as when placed at the f.o.b. point specified in the solicitation as when inspected by the Subcontractor pursuant to the solicitation or, if not inspected by the Subcontractor, as when last available for inspection under the solicitation.
- (b) The Subcontractor may repair any property made available on an "as is" basis. Such repair will be at the Subcontractor's expense except as otherwise provided in this clause. Such property may be modified at the Subcontractor's expense, but only with the written permission of the University. Any repair or modification of property furnished "as is" shall not affect its title with the Government.
- (c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation and if such change will adversely affect the Subcontractor, the Subcontractor shall, upon receipt of the property, notify the University detailing the facts and, as directed by the University, either
- (1) Return such property at the University's expense or otherwise dispose of the property; or
  - (2) Effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Subcontractor, the University shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the

procedures provided for in the Changes clause of the subcontract. The foregoing provisions for adjustment are the exclusive remedy available to the Subcontractor, and the University shall not be otherwise liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

- (d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed  
by the Property clause of the subcontract.

#### **B34, Reporting of Royalties** (Prime Contract Article 12, Clause 4)

If any royalty payments are reflected in the subcontract cost to the University, the Subcontractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the University) during the performance of this subcontract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this subcontract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as shall permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the University at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made. The provisions of this clause, appropriately modified as to parties, shall be included in all lower-tier subcontracts that exceed \$25,000 unless otherwise approved by the University.

#### **B35, Rights in Data - General** (FAR 52.227-14/Prime Contract Article 12, Clause 7)

- (a) **Definitions.** "*Computer Software*," as used in this clause, means computer programs, computer data  
bases, and documentation thereof.

"*Data*," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"*Limited Rights Data*," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"*Technical Data*," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"*Restricted Computer Software*," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or

privileged; or is published copyrighted computer software; including minor modifications of such computer software.

*"Unlimited Rights,"* as used in this clause, means the right of the Government and/or the University to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

*"Limited Rights,"* as used in this clause, means the rights of the Government and/or the University in limited rights data as set forth in paragraph (f) hereof.

*"Restricted Rights,"* as used in this clause, means the rights of the Government and/or the University in restricted computer software, including minor modifications of such computer software. as set forth in paragraph (f) hereof.

**(b) Allocation of Rights.**

(1) The Government shall have

(i) Ownership of all technical data and computer software first produced in the performance of this subcontract;

(ii) The right to inspect technical data and computer software first produced or used in the performance of this subcontract at all reasonable times (for which inspection of the proper facilities shall be afforded DOE by the Subcontractor and its lower-tier subcontractors);

(iii) The right to have all technical data and computer software first produced or specifically used in the performance of this subcontract delivered to the University or otherwise disposed of by the Subcontractor, either as the University may from time to time direct during the progress of the work or in any event as the University shall direct upon completion or termination of this subcontract, provided that nothing contained in this paragraph shall require the Subcontractor to deliver any technical data or computer software the delivery of which is excused by this Rights in Data - General clause;

(iv) Unlimited Rights in technical data and computer software specifically used in the performance of this subcontract, except as provided herein regarding copyright, and except for technical data and computer software pertaining to items of standard commercial design provided, that if such data are Limited Rights Data or Restricted Computer Software the rights of the Government and/or the University in such data shall be governed solely by the provisions of paragraph (f) hereof ("Rights in Limited Rights Data") and ("Rights in Restricted Computer Software"); and

(v) The right to remove, cancel, correct or ignore any markings not authorized by the terms of this

subcontract on any data furnished hereunder if, in response to a written inquiry by the University concerning the propriety of the markings, the Subcontractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case the University will notify the Subcontractor of the action taken.

(2) The Subcontractor shall have

- (i) The right to withhold its Limited Rights Data and Restricted Computer Software in accordance with the provisions of this clause;
- (ii) The right to use for its internal purposes, subject to patent, security or other provisions of this subcontract, data it first produces in the performance of this subcontract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this subcontract have been met as of the date of the internal use of such data; and
- (iii) The right to assert copyright subsisting in scientific and technical articles as provided in paragraph (d) of this clause.

The Subcontractor agrees that for Limited Rights Data or Restricted Computer Software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by DOE, the University, or a third party, including a DOE Contractor or Subcontractor, and for technical data or computer software it first produces under this subcontract which is authorized to be marked by DOE, the Subcontractor shall treat such data in accordance with any restrictive legend contained thereon.

Nothing contained in this clause shall imply a license to the Government or the University under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government or the University under any patent.

(c) **Copyright (General).**

- (1) The Subcontractor agrees not to mark, register or otherwise assert a copyright in any data in a published or unpublished work, other than as set forth in paragraph (d) below.
- (2) Except for material to which the Subcontractor has obtained the right to assert copyright in accordance with paragraph (d) hereof, the Subcontractor agrees not to include in the data delivered under this subcontract any material copyrighted by the Subcontractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government and the University of the same scope as set forth in paragraph (d) below. If the Subcontractor believes that such copyrighted material for which the license cannot be obtained must be included in the data to be delivered, rather than incorporated therein by reference, the Subcontractor shall obtain the written authorization of the University to include such material in the data prior to its delivery.

**(d) Copyrighted Works (Scientific and Technical Articles).** The Subcontractor shall have the right to

assert, without prior approval of the University, copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this subcontract, and published in academic, technical or professional journals, symposia proceedings or similar works. When assertion of copyright is made, the Subcontractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship including contract number on the data when such data are delivered to the University as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Subcontractor grants to the Government, and others acting on its behalf, including the University, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

**(e) Copyrighted Works (Other than Scientific and Technical Articles).**

(1) The Subcontractor may obtain permission to assert copyright subsisting in technical data and computer software first produced by the Subcontractor in performance of this subcontract, where the Subcontractor can show that commercialization would be enhanced by such copyright protection, subject to the following:

**(i) Subcontractor Request to Assert Copyright.**

(A) For data other than scientific and technical articles, the Subcontractor shall submit in writing to the University for approval by the DOE Patent Counsel its request to assert copyright in data first produced in the performance of this subcontract pursuant to this clause. Each request by the Subcontractor to be complete must include: (1) the identity of the data (including any computer program) for which the Subcontractor requests permission to assert copyright, as well as an abstract which is descriptive of the data and is suitable for dissemination purposes; (2) whether the data is subject to export control; (3) a statement that the Subcontractor plans to commercialize the data within five (5) years of obtaining permission to assert copyright; and (4) for data other than computer software, a statement explaining why the assertion of copyright is necessary to enhance commercialization.

(B) Permission of the Subcontractor to assert copyright in excepted categories of data as determined by DOE is expressly withheld. Such excepted categories include data whose release (1) would be detrimental to national security, i.e., involve classified information or data or sensitive information under Section 148 of the Atomic Energy Act of 1954, as amended, or are subject to export control for nonproliferation and other nuclear related national security purposes; (2) would not enhance the appropriate transfer or dissemination and commercialization of such data; (3) would have a negative impact on U.S. industrial competitiveness; (4) would prevent DOE from meeting its obligations under treaties and international agreements; or (5) would be detrimental to one or more of DOE's programs. Additional excepted categories may be added by DOE. Where data are determined to be under an export control restriction, the Subcontractor may still obtain permission to assert copyright in such restricted data for purposes of limited commercialization within

the constraints provided by the export control statutes and regulations subject to the provisions of this clause. However, notwithstanding any other provision of this subcontract, all data developed with Naval Reactors' funding and those data that are classified fall within the above excepted categories and permission to assert copyright will not be granted by DOE for those data. Additionally, the rights of the Subcontractor in data subject to the disposition of data rights in the treaties and international agreements identified under this subcontract as well as those additional treaties and international agreements which DOE may from time to time identify; such amendment listing added treaties and international agreements is effective only for data which is developed after the date such treaty or international agreement is added to this subcontract. Also, the Subcontractor will not be permitted to assert copyright in data in the form of various technical reports generated by the Subcontractor under the subcontract without first obtaining the advanced written permission of the University.

- (ii) DOE Review and Response to Subcontractor's Request. The DOE Patent Counsel shall use its best efforts to respond in writing within 90 days of receipt of a complete request by the Subcontractor to assert copyright in technical data and computer software pursuant to this clause. Such response shall either give or withhold DOE's permission for the Subcontractor to assert copyright or advise the Subcontractor that DOE needs additional time to respond and the reasons therefor.

(iii) **Permission for Subcontractor to Assert Copyright.**

- (A) For computer software, the Subcontractor shall furnish to the Contractor designated by DOE to serve as the DOE centralized software distribution and control point, at the time permission to assert copyright is given under (ii) above: (1) an abstract describing the software suitable for publication, (2) the source code for each software program, and (3) the object code and at least the minimum support documentation needed by a technically competent user to understand and use the software. The DOE Patent Counsel, for good cause shown by the Subcontractor, may allow the minimum support documentation to be delivered within 60 days after permission to assert copyright is given or at such time the minimum support documentation becomes available. The Subcontractor acknowledges that the above-identified DOE-designated Contractor may provide a technical description of the software in an announcement identifying its availability from the copyright holder.

which (B) Unless otherwise directed by the University, for data other than computer software to

the Subcontractor has received permission to assert copyright under paragraph (ii) above, the Subcontractor shall within sixty (60) days of obtaining such permission furnish to DOE's Office of Scientific and Technical Information (OSTI) a copy of such data as well as an abstract of the data suitable for dissemination purposes. The Subcontractor acknowledges that OSTI may provide an abstract of the data in an announcement to DOE, its contractors and to the public identifying its availability from the copyright holder.

- (C) For a period of five (5) years beginning on the date the Subcontractor is given permission to assert copyright in data, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to



reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(D) After the five (5) year period set forth in (C) above, or if, prior to the end of such period, the

Subcontractor abandons commercialization activities pertaining to the data to which the Subcontractor has been given permission to assert copyright, the Subcontractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, distribute copies to the public, prepare derivative works, perform publicly and display publicly, and to permit others to do so.

(E) Whenever the Subcontractor obtains permission to assert copyright in data, the Subcontractor

shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 on the copyrighted data and also an acknowledgment of the Government sponsorship and license rights of paragraphs (C) and (D) above. Such action shall be taken when the data are delivered to the Government, published, licensed, or deposited for registration as a published work in the U.S. Copyright Office. The acknowledgment of Government sponsorship and license rights shall be as follows:

NOTICE: The Government is granted for itself and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, and perform publicly and display publicly. Beginning five (5) years after (date permission to assert copyright was obtained) the Government is granted for itself, and others acting on its behalf a paid-up, nonexclusive, irrevocable worldwide license in this data to reproduce, prepare derivative works, distribute copies to the public, perform publicly and display publicly, and to permit others to do so. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

(F) With respect to any data to which the Subcontractor has received permission to assert copyright, the DOE has the right, during the 5-year period set forth in subparagraph (e)(1)(i)(A) above, to request the Subcontractor to grant a nonexclusive, partially exclusive or exclusive license in any field of use to a responsible applicant(s) upon terms that are reasonable under the circumstances, and if the Subcontractor refuses such request, to grant such license itself, if the DOE determines that the Subcontractor has not made a satisfactory demonstration that either it or its licensee(s) is actively pursuing commercialization of the data as set forth in subparagraph (e)(1)(i)(A) above. Before licensing under this paragraph (F), DOE shall furnish to the Subcontractor a written request for the Subcontractor to grant the stated license, and the Subcontractor shall be allowed thirty (30) days (or such longer period as may be authorized by the DOE for good cause shown in writing by the Subcontractor) after such notice to show good cause why the license should not be granted. The Subcontractor shall have the right to appeal the decision of the DOE to grant the stated license to the Invention Licensing Appeal Board as set forth in 10 CFR 781.65 - "Appeals."

of (G) No costs shall be allowable for maintenance of copyrighted data, primarily for the benefit the Subcontractor and/or a licensee and which exceeds University/DOE program needs, except as expressly provided in writing by the University. The Subcontractor may use its net royalty income to effect such maintenance costs.

the (H) At any time the Subcontractor abandons commercialization activities for data for which Subcontractor has received permission to assert copyright in accordance with this clause, it shall advise OSTI and DOE Patent Counsel and upon request assign the copyright to the Government so that the Government can distribute the data to the public.

(3) It is the responsibility of the Subcontractor to obtain from employees of lower-tier subcontractors data and rights therein necessary to fulfill the Subcontractor's obligations to the Government and the University with respect to such data including at least

- (i) A written acknowledgment by each employee that the Production of Data required by the subcontract is within the scope of the employee's employment; and
- (ii) An assignment to the Subcontractor of the employee's rights in copyrights subsisting in data, expressly including Computer Software first produced by the employee while employed by Subcontractor under the subcontract; and
- (iii) An agreement from the employee to execute all necessary and proper papers to assign to the Subcontractor such rights subsisting in data, expressly including Computer Software, upon request by the Subcontractor.

**(f) Subcontracting.**

(1) The Subcontractor agrees to use a Rights in Data clause as directed by the University in lower-tier subcontracts having as a purpose the conduct of research, development, and demonstration work and in lower-tier subcontracts for supplies.

(2) It is the responsibility of the Subcontractor to obtain from its lower-tier subcontractors data and rights therein, on behalf of the Government and/or the University, necessary to fulfill the Subcontractor's obligations to the Government and/or the University with respect to such data. In the event of refusal by a lower-tier subcontractor to Subcontractor to accept a clause affording the Government such rights, the Subcontractor shall:

- (i) Promptly submit written notice to the University setting forth reasons for the lower-tier subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and
- (ii) Not proceed with the subcontract without written authorization of the University.

(g) **Rights in Limited Rights Data.** Except as may be otherwise specified in this subcontract as data

which are not subject to this paragraph, the Subcontractor agrees to and does hereby grant to the Government and the University an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any Limited Rights Data of the Subcontractor specifically used in the performance of the subcontract; provided, however, that to the extent that any Limited Rights Data when furnished or delivered is specifically identified by the Subcontractor at the time of initial delivery to the University, such data shall not be used within or outside the Government or University except as provided in the "Limited Rights Notice" set forth below. All such Limited Rights Data shall be marked with the following "Limited Rights Notice":

#### **LIMITED RIGHTS NOTICE**

These data contain "limited rights data", furnished under Subcontract no. \_\_\_\_\_ with the University which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government and/or University or be used for purposes of manufacture without prior permission of the Subcontractor, except that further disclosure or use may be made solely for the following purposes

(a) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the

"limited rights data" be retained in confidence and not be further disclosed;

(b) This "limited rights data" may be disclosed to other lower-tier subcontractors participating in the

Government's or University's program of which this subcontract is a part for information or use in connection with the work performed under their contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(c) This "limited rights data" may be used by the Government, the University, or others on their behalf

for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed.

This Notice shall be marked on any reproduction of this data in whole or in part.

**(END OF NOTICE)**

(h) **Rights in Restricted Computer Software.**

(1) Except as may be otherwise specified in this purchase order as data which are not subject to this paragraph, the Subcontractor agrees to and does hereby grant to the Government and the University an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any restricted computer software of the Subcontractor specifically used in the performance of this subcontract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Subcontractor at

the time of initial delivery to the University or a representative of the University, such data shall not be used with or outside the Government or University except as provided in the "Restricted Rights" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice"

### **RESTRICTED RIGHTS NOTICE (long form)**

- (a) This computer software is submitted with restricted rights under Subcontract no. \_\_\_\_\_ with the University. It may not be used, reproduced, or disclosed by the Government or the University except as provided in paragraph (b) of this notice.
- (b) This computer software may be
- (1) Used, or copied for use, in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
  - (2) Used, copied for use, in a backup or replacement computer if any computer for which is was acquired is inoperative or is replaced;
  - (3) Reproduced for safekeeping (archives) or backup purposes;
  - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
  - (5) Disclosed to and reproduced for use by lower-tier subcontractors under a service subcontract (of the type defined in FAR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government and University makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government and University, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

### **(END OF NOTICE)**

- (2) Where it is impractical to include the Restricted Right Notice on Restricted Computer Software, the following short-form Notice may be used in lieu thereof:

### RESTRICTED RIGHTS NOTICE (short form)

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of Subcontract no. \_\_\_\_\_ with \_\_\_\_\_ (name of Subcontractor).

#### (END OF NOTICE)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr) in brackets or a box, a [R-mo/yr], may be used. This will be read to mean Restricted Computer Software, subject to the rights of the Government and University as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If Restricted Rights Computer Software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government and University without disclosure prohibitions, with unlimited rights, unless the Subcontractor includes the following statement with such copyright notice: "Unpublished \_ rights reserved under the Copyright Laws of the United States."

### B36, Rights in Data - Special Works (FAR 52.227-17)

- (a) **Definition.** "*Data*," as used in this clause, means recorded information regardless of form or characteristic, such as writings, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of similar nature (whether or not copyrighted) that are specified to be delivered under the subcontract. The term includes data such as management studies and data produced under support services subcontracts but does not include financial reports, cost analyses, and other information incidental to subcontract administration.
- (b) All data first produced or composed in the course of or under the subcontract shall be the sole property of the Government. Except with the prior written permission of the University, the Subcontractor agrees not to assert any rights at common law or in equity or to establish any claim to statutory copyright in such data. The Subcontractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others so to do without the written consent of the University or until such time as the University or the Government may have released such data to the public.
- (c) The Subcontractor hereby grants to or will obtain for the Government a royalty-free, nonexclusive, and irrevocable license throughout the world

(1) To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all

data that are not first produced or composed in the performance of the subcontract but that are incorporated in the work furnished under the subcontract; and

(2) To authorize others to do so.

(d) The Subcontractor shall indemnify and save and hold harmless the University and the Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses

(1) For violation of proprietary rights, copyrights, or rights or privacy, arising out of the publication,  
translation, reproduction, delivery, performance, use, or disposition of any data furnished under the subcontract; or

(2) Based upon libelous, defamatory, or other unlawful matter contained in such data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

#### **B37, Rights in Proposal Data (DEAR 952.227-82)**

Except for technical data contained on pages \* of the Subcontractor's proposal dated \* that are asserted by the Subcontractor as being proprietary data, it is agreed that as a condition of the award of the subcontract and notwithstanding the provisions of any notice appearing on the proposal, the University and the Government shall have the right to use, duplicate, and disclose the technical data contained in the proposal upon which the subcontract is based and have other do so for any purpose whatsoever.

\*Identified in Section F of the Schedule.

#### **B38, Sensitive Foreign Nations Controls (DEAR 952.204-71/Prime Contract Article 10, Clause 4)**

(a) In connection with any activities in the performance of the subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements relating to those countries which from time to time, are identified to the University by written notice from DOE as sensitive nations. The Subcontractor shall have the right to terminate according to the termination for convenience clause of these terms and conditions, this subcontract if the University determines that it is unable, without substantially interfering with its policies or without adversely effecting its performance of this work under this subcontract as a result of such notification.

(b) The Subcontractor agrees to incorporate this clause, including this paragraph (b) in all lower-tier subcontracts under this subcontract.

**B39, Small Business and Small Disadvantaged Business Subcontracting Plan (FAR 52.219-9)**

(a) This clause does not apply to small business concerns.

(b) **Definitions.** "*Commercial product*," as used in this clause means a product in regular production that

is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product that, in the opinion of the University, differs only insignificantly from the Subcontractor's commercial product.

"*Subcontract*," as used in this clause means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for goods or services required to perform the contract or subcontract.

(c) The Subcontractor, upon request by the University, shall submit and negotiate a subcontracting plan,

where applicable, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the Subcontractor is submitting an individual subcontract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic subcontract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant subcontract. The subcontracting plan shall be negotiated within the time specified by the University. Failure to submit and negotiate the subcontracting plan shall make the Subcontractor ineligible for award of a subcontract.

(d) The Subcontractor's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as lower-tier subcontractors. The Subcontractor shall include all lower-tier subcontracts that contribute to subcontract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of —

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns; and

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.

- (3) A description of the principal types of goods and services to be subcontracted and an identification of the types planned for subcontracting to small business concerns and to small disadvantaged business concerns.
- (4) A description of the method used to develop the subcontracting goals in (1) above.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System [PASS] of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).
- (6) A statement about whether the Subcontractor included indirect costs in establishing subcontracting goals and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business concerns and with small disadvantaged business concerns.
- (7) The name of the person employed by the Subcontractor who will administer the Subcontractor's subcontracting program and a description of the duties of that person.
- (8) A description of the efforts the Subcontractor will make to ensure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for lower-tier subcontracts.
- (9) Assurances that the Subcontractor will include the Utilization of Small Business Concerns and Small Disadvantaged Business Concerns clause in all subcontracts that offer further subcontracting opportunities and that the Subcontractor will require all lower-tier subcontractors (except small business concerns) who receive subcontracts exceeding \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the Subcontractor.
- (10) Assurances that the Subcontractor will
- (i) Cooperate in any studies or surveys that may be required by the University;
  - (ii) Submit periodic reports to allow the University or the Government to determine the extent of compliance by the Subcontractor with the subcontracting plan;
  - (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts (SF 295 is not required), in accordance with instructions on the forms, and
  - (iv) Ensure that its lower-tier subcontractors agree to submit Standard Forms 294 and 295.
- (11) A recitation of the types of records, including establishing source lists, the Subcontractor will



maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis unless otherwise indicated):

- (i) Source lists, guides, and other data that identify small and small disadvantaged business concerns;
  - (ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns;
  - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, and indicating (A) whether small business concerns were solicited and if not, why not; (B) whether small disadvantaged business concerns were solicited and if not, why not; and (C) if applicable, the reason award was not made to a small business concern.
  - (iv) Records of any outreach efforts to contact trade associations, business development organizations, and conferences and trade fairs to locate small and/or small disadvantaged business sources.
  - (v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.
  - (vi) On a subcontract-by-subcontract basis, records to support award data submitted by the Subcontractor to the University or the Government, including the name, address, and business size of each lower-tier subcontractor. Subcontractors having company or division-wide annual plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient subcontract performance, the Subcontractor shall perform the following functions:
- (1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules to facilitate the participation by such concerns. When the Subcontractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
  - (2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.
  - (3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.
  - (4) Provide notice to lower-tier subcontractors concerning penalties and remedies for

misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Subcontractor's subcontracting plan.

- (f) A master subcontracting plan on a facility-wide or division-wide basis that contains all the elements,  
except goals, required by (d) above may be incorporated by reference as a part of the subcontracting plan required of the Subcontractor by this clause, provided that (1) the master plan has been approved (2) the Subcontractor provides copies of the approved master plan and evidence of its approval to the University, and (3) goals and any deviations from the master plan deemed necessary by the University to satisfy the requirements of the subcontract are set forth in the individual subcontracting plan.
- (g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to  
the Subcontractor's production generally for both commercial and noncommercial products rather than solely to the subcontract. In these cases, and with the concurrence of the Government, the Subcontractor shall submit one company-wide or division-wide annual plan.
- (2) The annual plan shall be reviewed for approval by the Federal agency awarding the Subcontractor  
its first prime contract requiring a subcontracting plan during the fiscal year or by an agency satisfactory to the University.
- (3) The approved plan shall remain in effect during the Subcontractor's fiscal year for all of the Subcontractor's commercial products.
- (h) Prior compliance of the Subcontractor with other such subcontracting plans under previous subcontracts will be considered by the University in determining the responsibility of the Subcontractor for award of the subcontract.
- (i) The failure of the Subcontractor or lower-tier subcontractor to comply in good faith with (1) the Utilization of Small Business Concerns and Small Disadvantaged Business Concerns clause of the subcontract, or (2) an approved plan required by this clause, shall be a material breach of the subcontract.

#### **B40, Special Test Equipment (FAR 52.245-18)**

- (a) "*Special test equipment*," as used in this clause means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a subcontract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general facility testing purposes.

- (b) The Subcontractor may either acquire or fabricate special test equipment at University expense when the equipment is not otherwise itemized in the subcontract and when the prior approval of the University has been obtained. At least 30 days in advance, the Subcontractor shall provide the University with a written notice of the Subcontractor's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall include an estimated aggregate cost of all items and components of the equipment, the individual cost of which is less than \$5,000, and shall include the following information on each item or component of equipment costing \$5,000, or more:
- (1) The end use application and function of each proposed special test unit and identification of special characteristics and the reasons for the classifications of the test unit as special test equipment;
  - (2) A complete description of the items to be acquired and the items to be fabricated by the Subcontractor;
  - (3) The estimated cost of the item of special test equipment or component; and
  - (4) A statement that intraplant screening of the Subcontractor's and Government-owned special test equipment and components has been accomplished and that no such equipment or components are available for use in performing the subcontract.
- (c) The University may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Subcontractor. Such University-furnished items shall be subject to the Property clause, except that the University shall not be obligated to deliver such items any sooner than the Subcontractor could have acquired or fabricated them after expiration of the 30-day period for notice in paragraph (b) of this clause. However, unless the University notifies the Subcontractor of its decision to furnish the items within the 30-day period and subject to any other applicable provisions of the subcontract, the Subcontractor may proceed to acquire or fabricate the equipment or components.
- (d) In any lower-tier subcontract that provides that special test equipment or components may be acquired or fabricated for the University, the Subcontractor shall insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Subcontractor shall furnish the names of such lower-tier subcontractors to the University.
- (e) If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Subcontractor shall comply with paragraph (b) above. In so complying, the Subcontractor shall identify the change order that requires the proposed acquisition, fabrication, or modification.

**B41, State of New Mexico Gross Receipts and Compensating Tax (FAR 52.229-10/Prime Contract Article 7, Clause 15)**

This clause applies if (1) the subcontract directs or authorizes the Subcontractor to acquire tangible personal property as a direct cost under the subcontract and title to such property passes directly to

and vests in the United States upon delivery of the property by the Subcontractors, and (2) the subcontract is for services to be performed in whole or in part within New Mexico.

- (a) Within thirty days after award of the subcontract, the Subcontractor shall advise the State of New Mexico of the subcontract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico, and shall identify the subcontract number.
- (b) The Subcontractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the subcontract fee and costs paid for performance of the subcontract, or of any part of portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Subcontractor or its lower-tier subcontractors will be determined in accordance with the Allowable Cost and Payment clause of the subcontract except as provided in paragraph (d) of this clause.
- (c) The Subcontractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico, 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Subcontractor shall use these certificates strictly in accordance with the subcontract and the agreement between DOE and the New Mexico Taxation and Revenue Department.
- (d) The Subcontractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Subcontractor for use in the performance of the subcontract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipts taxes and those taxes, which are then passed on to the Subcontractor, shall not be reimbursable as an allowable cost by the University.
- (e) The Subcontractor shall pay the New Mexico compensating user tax for any tangible personal property that is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.
- (f) Out-of-state purchase of tangible personal property by the Subcontractor that would be otherwise subject to compensating tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the Subcontractor only if such property is not used for Federal purposes.
- (g) The University may receive information regarding the Subcontractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the University, may participate in any matters or proceedings pertaining to this clause or the above mentioned Agreement. This shall not preclude the Subcontractor from having its own representative nor does it obligate the University to represent its Subcontractor.
- (h) The Subcontractor agrees to insert the substance of this clause, including this paragraph (h), in each lower-tier subcontract that meets the criteria in FAR 29.401-6 (b)(1) through (3).

- (i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred before the date of termination.

**B42, Subcontractor Cost or Pricing Data (FAR 52.215-24)**

- (a) Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into, or before pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Subcontractor shall require the lower-tier subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

- (b) The Subcontractor shall require the lower tier subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (a) above were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.

- (c) In each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR

15.804-2(a)(1) when entered into, the Subcontractor shall insert either

(1) The substance of this clause, including this paragraph (c), if paragraph (a) above requires submission of cost or pricing data for the lower-tier subcontract; or

(2) The substance of the clause entitled Subcontractor Cost or Pricing Data -Modifications.

**B43, Subcontractor Cost or Pricing Data - Modifications (FAR 52.215-25)**

- (a) The requirements of paragraphs (b) and (c) of this clause shall become operative only for any modification to the subcontract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), and shall be limited to such modifications.
- (b) Before awarding any lower-tier subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) when entered into, or pricing any lower-tier subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Subcontractor shall require the lower-tier

subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is

- (1) Based on adequate price competition;
  - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
  - (3) Set by law or regulation.
- (c) The Subcontractor shall require the lower-tier subcontractor to certify in substantially the form prescribed in Subsection 15.804-4 of the FAR that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the lower-tier subcontract or lower-tier subcontract modification.
- (d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in each lower-tier subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), when entered into.

**B44, Termination for Convenience (Applies to Educational and Other Nonprofit Institutions) (FAR 52.249-5)**

- (a) The University may terminate performance of work under the subcontract in whole or, from time to time, in part if the University determines that a termination is in the University's or the Government's interest. The University shall terminate by delivering to the Subcontractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination and, except as directed by the University, the Subcontractor shall immediately proceed with the following obligations:
- (1) Stop work as specified in the notice.
  - (2) Place no further lower-tier subcontracts or orders except as necessary to complete the continued portion of the subcontract.
  - (3) Terminate all applicable lower-tier subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.
  - (4) As directed by the University, assign to the University all right, title, and interest of the Subcontractor under the lower-tier subcontracts terminated, in which case the University shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

- (5) With approval or ratification to the extent required by the University, settle all outstanding liabilities and termination settlement proposals arising from the termination of lower-tier subcontracts; approval or ratification will be final for purposes of this clause.
- (6) As directed by the University, transfer title (if not already transferred) and deliver to the University any information and items that, if the subcontract had been completed, would have been required to be furnished, including (i) goods produced, in process, or acquired for the work terminated and (ii) completed or partially completed plans, drawings, and information.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary or that the University may direct to protect and preserve the property related to the subcontract that is in the possession of the Subcontractor and in which the University or the Government has or may acquire an interest.
- (9) As directed or authorized by the University, use its best efforts to transfer or dispose of termination inventory other than that retained by the University under subparagraph (6) above, provided however, that the Subcontractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by and at prices approved by the University. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the University under the subcontract, credited to the price or cost of the work, or paid in any other manner directed by the University.
- (c) After termination, the Subcontractor shall submit a final termination settlement proposal to the University in the form and with the certification prescribed by the University. The Subcontractor shall submit the proposal promptly but no later than one year from the effective date of termination unless extended in writing by the University upon written request of the Subcontractor within this one-year period. If the Subcontractor fails to submit the termination settlement proposal within the time allowed, the University may determine, on the basis of information available, the amount, if any, due the Subcontractor because of the termination and shall pay the amount determined.
- (d) Subject to paragraph (c) above, the Subcontractor and the University may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Subcontractor and any reasonable loss on outstanding commitments for personal services that the Subcontractor is unable to cancel, provided that the Subcontractor exercised reasonable diligence in diverting such commitments to other operations. The subcontract shall be amended and the Subcontractor paid the agreed amount.
- (e) The cost principles and procedures in Subpart 31.3 of the FAR, in effect on the date of the subcontract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Subcontractor is not an educational institution and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, Cost Principles for Nonprofit Organizations, those cost principles shall apply, provided that if the Subcontractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at FAR Subpart 31.2 for commercial organizations shall apply to such subcontractor.

(f) Under the terms and conditions it prescribes, the University may make partial payments against costs

incurred by the Subcontractor for the terminated portion of the subcontract if the University believes the total of these payments will not exceed the amount to which the Subcontractor will be entitled.

(g) The Subcontractor has the right of appeal as provided under the Disputes clause of the subcontract, except that if the Subcontractor failed to submit the termination settlement proposal within the time provided in paragraph (c) and failed to request a time extension, there is no right of appeal.

#### **B45, Waiver of Facilities Capital Cost of Money (FAR 52.215-31)**

The Subcontractor did not include facilities capital cost of money as a proposed cost of this subcontract. Therefore, it is an unallowable cost under this subcontract.

#### **B46, Waiver of Indemnity (FAR 52.227-5)**

Any provision or clause of the subcontract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing the subcontract, of any invention covered by the United States patents identified in the schedule and waives indemnification by the Subcontractor regarding such patents.

#### **B47, Whistleblower Protection (DEAR 970.5204-59)**

(a) The Subcontractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708, with respect to work performed on University or Government Premises.

(b) The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph (b) in

subcontracts, at all tiers, with respect to work performed on University or Government premises.

#### **B48, Work on University or Government Premises (LANL Internal Clause)**

To the extent that the Subcontractor's work under the subcontract involves performance by the Subcontractor or its lower-tier subcontractors at University or Government-owned sites or facilities, the following provisions shall apply:

(a) **Liens.** The Subcontractor agrees that, at any time upon the request of the University, it will submit a

sworn statement setting forth the services performed or goods furnished by lower-tier subcontractors and the amount due and to become due to each. The Subcontractor further agrees that before the final payment called for hereunder, it will, if requested, submit to the University a complete set of vouchers showing what payments have been made for goods and labor used in connection with the work called for hereunder.



**(b) Indemnify and Hold Harmless.**

- (1) The Subcontractor shall indemnify and hold harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor, and goods furnished by the Subcontractor or its lower-tier subcontractors under the subcontract, and from all laborer's, materialmen's, and mechanic's liens upon the real property upon which the work is located or any other property of the University or the Government; and
- (2) Promptly notify the University, in writing, of any claim, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with such notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, cause of action or suits, or liens. The Subcontractor, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims as will enable the University and the Government to protect their respective interests by litigation or other means.

The final payment shall not be made until the Subcontractor, if required, shall deliver to the University a complete release of all liens arising out of the subcontract or receipts in full in lieu thereof as the University may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and goods for which a lien could be filed. But the Subcontractor may, if any lower-tier subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or other means. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

- (c) **Cleaning Up.** The Subcontractor shall at all times keep University or Government premises and adjoining premises where the work is performed free from accumulations of waste material or rubbish caused by its employees, work of its employees, or work of any of its lower-tier subcontractors. At the completion of the work, the Subcontractor shall remove all rubbish from and about the building and all of its and its lower-tier subcontractor's tools, scaffolding, and surplus materials and shall leave the work area "broom clean" or its equivalent, unless more exactly specified. In cases of a dispute between the Subcontractor and lower-tier subcontractors employed on or about the structure or structures upon which the work is to be done, as herein provided, as to responsibility for the removal of the rubbish, or in case the same is not promptly removed as herein required, the University may remove the rubbish and charge the cost to the Subcontractor.

- (d) **Employees.** The Subcontractor shall not employ for the work any unfit person or anyone not skilled in the work assigned to the person and shall devote only its best qualified personnel to work under the subcontract. Should the University deem anyone employed on the work incompetent or unfit for duty and so inform the Subcontractor, the Subcontractor shall immediately remove such person from

work under the subcontract, and that person shall not again, without written permission of the University, be assigned to work under the subcontract.

- (e) **Insurance.** The Subcontractor shall maintain with reputable companies insurance in amounts required under the subcontract sufficient to protect the University and the Government from any and all public liability and Workmen's Compensation claims at all times during the performance of the subcontract. If requested, the Subcontractor shall supply the University with one copy of certificates of insurance covering policies required hereunder and shall obtain satisfactory evidence of lower-tier subcontractors compliance with these provisions before their participation in the work. In the absence of more specific direction from the University, the Subcontractor shall maintain additional insurance to the extent consistent with sound business practice.

(f) **Environment, Safety, Health, and Fire Protection.**

- (1) The Subcontractor shall take all reasonable precautions in the performance of the work under the

subcontract to protect the safety and health of employees and members of the public and shall comply with all health, safety, fire protection, and environmental regulations and requirements, including reporting requirements, of the University and DOE. The University shall notify the Subcontractor in writing of any noncompliance with the provisions of this clause and the corrective action to be taken. After receipt of such notice, the Subcontractor shall immediately take corrective action. If the Subcontractor fails to comply with said regulations or requirements of the University and DOE, the University may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start work order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

- (2) The Subcontractor shall take all reasonable measures and precautions at all times to prevent injuries to or the death of its employees or any other person who enters upon University or Government premises. Such measures and precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on University or Government premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment, or facilities, whether such machinery, equipment, or facilities are the property of or are being operated by the Subcontractor, its lower-tier subcontractors, the University, or other persons.

**B49, Workplace Substance Abuse Programs at DOE Sites (DEAR 970.5204-58)**

- (a) **Program Implementation.** Consistent with 10 CFR 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, the Subcontractor shall develop, implement, and maintain a workplace substance abuse program for performance of subcontracts involving access to or handling of classified information or special nuclear materials; high risk of danger to life, the environment, public health and safety, or national security; or transportation of hazardous materials to or from a DOE site.

(b) **Remedies.** In addition to any other remedies available to the University, the Subcontractor's failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved program may render the Subcontractor subject to: suspension of subcontract payments, or, when applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) **Lower-tier Subcontracts.**

- (1) The Subcontractor agrees to notify the University reasonably in advance of, but not later than 30 days prior to, the award of any lower-tier subcontract the Subcontractor believes may be subject to the requirements of 10 CFR Part 707.
- (2) The University requires all subcontracts subject to the provisions of 10 CFR Part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The University shall review and approve each Subcontractor's program, and shall periodically monitor each Subcontractor's implementation of the program for effectiveness and compliance with 10 CFR Part 707.
- (3) The Subcontractor agrees to include, and require the inclusion of the requirements of this clause in all lower-tier subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.